

**Respectfully Submitted Comments on: PSC
Docket No. 06-241, Delmarva Power Proposed
Request for Proposals**

**To: the Public Service Commission of the State
of Delaware**

By: Bluewater Wind LLC

Date: August 31, 2006

**[Below Please Find The Proposed RFP
Document Converted From .PDF To Microsoft
Word. All Bluewater Wind Comments And
Proposed Language Are In Font Color Blue And
Placed After The Relevant RFP Section. All
Original Sections Are Retained. Original Page
Numbers Were Not Able To Be Retained.
Bluewater Page Numbers Appear As "Page X Of
Y".]**

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF STANDARD)
OFFER SUPPLY SERVICE BY THE DELMARVA)
POWER & LIGHT COMPANY UNDER 26 DEL. C.)
SECTION 1007 (c) & (d): REVIEW AND) DOCKET NO. 06-241
APPROVAL OF THE REQUEST FOR PROPOSALS)
FOR THE CONSTRUCTION OF NEW GENERATION) RESOURCES UNDER 26
DEL C. SECTION 1007(d))

**IN THE MATTER OF THE PROVISION OF STANDARD OFFER SUPPLY TO
RETAIL CONSUMERS IN THE SERVICE TERRITORY OF DELMARVA POWER &
LIGHT COMPANY (Filed on August 1, 2006)))
DOCKET NO. 04-391**

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OVERVIEW

Bluewater Wind, LLC is an offshore wind energy company that is committed to developing domestic, stable-priced, and environmentally clean electricity for Delaware. Bluewater Wind is a wholly-owned subsidiary of Arcadia Windpower Holdings LLC with staff and offices in Delaware, New York, New Jersey, and Rhode Island. Arcadia Windpower, under its subsidiary, Windpark Solutions Arcadia, successfully developed the 135 MW Judith Gap Montana wind project in 2005. This project currently produces over 450,000 Megawatt-hours of electricity per year.

Bluewater Wind is excited by the prospect of supplying fuel-free, renewable power to the citizens of Delaware. We applaud Delaware's legislators, citizens, and policy makers in their effort to stabilize escalating energy prices and provide Delawareans with sources of energy that achieve the highest environmental standards, as well as provide economic development in the state of Delaware.

While Bluewater Wind will submit a bid under this RFP, we have a number of concerns with the Proposed RFP. We respectfully believe these concerns can easily be remedied by relying upon the intent and authority established in H.B. 6.

H.B. 6 provides an excellent opportunity for the Public Service Commission (PSC), the State Energy Office, the Office of Management & Budget (OMB), and the Controllers Office to reduce the price volatility of energy that is delivered to DP&L's customers, and to obtain environmental benefits that go beyond fuel-based energy sources. In the spirit of the legislation, we respectfully ask that you consider the following recommendations as you evaluate the current Proposed RFP.

Our questions and detailed recommendations for each of the specific sections of the Proposed RFP are provided below. The specific recommendations address the following general areas of comment on the Proposed RFP:

- 1) The Proposed RFP can be more responsive to the legislative mandate for the RFP, as defined in H.B. 6, namely energy price stability, reducing the environmental impacts of energy generation, benefits from adopting new and emerging technologies, siting feasibility, and terms and conditions for the sale of energy.
- 2) The Proposed RFP is drafted perhaps with fossil fuel technologies generally in mind. Simple changes to the Proposed RFP would enable proposals from other generation technologies such as wind electricity, and thus the RFP would both be more responsive to the legislative mandate of H.B. 6 and encourage more competition among potential bidders.
- 3) While DP&L clearly needs to set parameters as to the amount of *energy* it would take as a result of this RFP, as currently worded the Proposed RFP appears to limit proposed projects to 200MW of nameplate generation *capacity*. The RFP should recognize that different generation technologies deliver different amounts of energy for a given

nameplate capacity.

4) The Proposed RFP assumes that proposals received will have to be considered entirely within the context of DP&L's first Integrated Resource Plan (IRP), when in fact H.B. 6 is abundantly clear that this RFP for new power plant construction is to take place in addition to —and conceivably even prior to— any other types of procurement that might result from the IRP.

Bluewater Wind notes as an overarching comment that precedents for many comments below are found in the Long Island Power Authority Offshore Wind RFP of May 2003. This RFP is the only competitive offshore wind RFP issued in the U.S. to date. This carefully crafted RFP provided a robust competition of major companies to build an offshore wind park.

Bluewater Wind proposes a long-term, stable-priced renewable energy product with no fuel risk whatsoever, delivering capacity value, precisely forecasted and scheduled megawatt-hours of electricity, some ancillary services, Renewable Energy Credits to satisfy the Delaware RPS, and all environmental attributes currently traded and expected to be traded, including CO2. Finally, an offshore wind energy project will harness Delaware's greatest untapped natural and sustainable resource, its powerful ocean winds, while providing high-paying construction, operation, and maintenance jobs for Delawareans.

SECTION SPECIFIC COMMENTS AND PROPOSED LANGUAGE

DELMARVA POWER & LIGHT COMPANY'S COMPLIANCE FILING AND APPLICATION FOR APPROVAL OF PROPOSED REQUEST FOR PROPOSALS

Delmarva Power & Light Company ("Delmarva Power" or "Company"), pursuant to the Delaware Electric Utility Retail Customer Supply Act of 2006 (the "Act"), hereby files this compliance filing and seeks approval of the proposed Request for Proposals ("Proposed RFP"). Additionally, Delmarva Power seeks authorization to establish a regulatory asset / deferral account to capture incremental costs associated with the

development and submission of the Integrated Resource Plan ("IRP") and the Request For Proposals thereunder, including the costs of the services of the independent third-party entity that will be retained by the Commission, the Office of Management and Budget,

the Controller General, or the Energy Office at the expense of the Company as outlined in the Act and to allow for full recovery, plus carrying charges, through the Standard Offer Service ("SOS") process. This approach is consistent with the intent of the Act. It is the Company's opinion that the costs associated with developing and submitting an RFP to build generation to supply SOS should be recovered through the SOS process. In support of this compliance filing, Delmarva Power submits as follows:

1. Applicant

Delmarva Power is a wholly owned subsidiary of Conectiv, a Delaware corporation, which is in turn a wholly owned subsidiary of Pepco Holdings, Inc., a Delaware corporation. Delmarva Power is located at:

Delmarva Power & Light Company,
800 King Street, P.O. Box 231,
Wilmington, Delaware 19899

In addition to various non-utility corporations, Conectiv also owns the Atlantic City Electric Company, a New Jersey

corporation and New Jersey electric utility. PHI owns various non-utility corporations and also owns the Potomac Electric Power Company, a District of Columbia and Virginia corporation

William R. Moore Jr. Mgr., Reg. Affairs Delmarva Power Regulatory Affairs 401 Eagle Run Road Newark, DE 19702 With a copy to: Mark Finfrock Director, Risk Mgt Delmarva Power Risk Management 800 King Street, 5th Fl Wilmington, DE 19801	Anthony C. Wilson Associate Gen. Counsel Delmarva Power Legal Services Group 800 King Street, 5th <i>Fl</i> Wilmington, DE 19801 With a copy to: Deborah M. Royster, Deputy Gen. Counsel Pepco Holdings, Inc. Legal Services 701 Ninth Street, N.W., Suite 1100 Washington, D.C. 20068
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and electric utility operating in the District of Columbia and southern Maryland.

2. Communications

All communications and notices with respect to this proceeding are to be made to:

3. The Proposed RFP

The purpose of the Proposed RFP is to solicit proposals for the construction of New Generation Resource(s) (New Generation) within the State of Delaware, and may enter into a Power Purchase Agreement ("PPA") to sell electric power (capacity, energy, and

ancillary services) to Delmarva Power for purposes of supplying a portion of the Company's SOS customer requirements. The Proposed RFP is required pursuant to the Act. Under the Proposed RFP, Delmarva Power shall determine whether responses meet all thresholds requirements, and among those proposals, shall select the highest rated one(s) for evaluation under Delmarva Power's IRP. Those selected proposals satisfying Delmarva Power's needs under the IRP shall be invited to sign a PPA with Delmarva Power. The key terms and conditions of the proposed PPA are set forth in Exhibit 2, Key Commercial Terms of the Proposed Power Purchase Agreements. As set forth in Exhibit 1, Proposed RFP, Delmarva Power proposes, upon Commission and Energy Office approval or modification, to issue the Proposed RFP seeking proposals for the sale of electric power to Delmarva Power, subject to the following:

- 1 The construction of New Generation shall be located in Delaware and commercially operable no later than June 1, 2013 and not prior to the execution of the PPA. New Generation is defined as any generation resource which adds net generating capacity in the State. If Bidders propose to re-power an existing facility, Delmarva shall only consider the incremental capacity compared to the megawatts in place before the re-powering took place. For example, if a 150 MW facility is re-powered, and replaced with a 200 MW unit, the amount that may be offered to Delmarva under this RFP shall be 50 MW. By contrast, if a Bidder retires an existing generating unit, and adds another unit in the same location, the full amount of megawatts (up to 200 MW) shall be considered. Bidders may not retire a unit and propose to bring that unit back on

line in order to qualify under this RFP; in that case, only incremental additions would be evaluated.

2. Under a PPA, Delmarva Power may purchase up to 200 MW of New Generation (as determined by PJM with respect to Unforced Capacity or UCAP), energy and ancillary services. The proposed sale of capacity from the New Generation shall not be less than 50 MW for non-renewable projects and not less than 25 MW for renewable projects.¹ Capacity purchased will not exceed the UCAP delivered to PJM from the New Generation. Proposals for New Generation capable of delivering UCAP in excess of that Capacity sold under the PPA agreement are acceptable where the Bidder recognizes that less than 100% of the UCAP from the New Generation would be purchased by Delmarva.
3. The level of energy purchased under the PPA shall be consistent with the type of capacity proposed (e.g. baseload, intermediate, peaking, or load-following). Energy from renewable capacity may be limited by the anticipated capacity factor of the type of renewable resource.
4. Bidders may offer terms for the PPA for a minimum of 10 years and a maximum of 25 years.
5. Bidders will provide a non-refundable bid fee of \$10,000 at the time that bids are submitted.

Delmarva Power proposes to seek proposals for a project or combinations of projects providing capacity and energy that are cost-effective, that offer rate stability to Delmarva Power's Delaware SOS customers, and that satisfy other criteria specified in this Proposed RFP. The Proposed RFP describes Delmarva Power's request and provides information and instructions to prospective bidders.

WHEREFORE, Delmarva Power respectfully requests

that: A. The Commission approve the Proposed

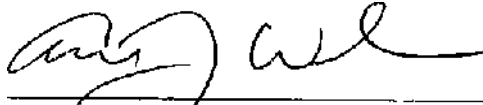
RFP; and,

For purposes of this RFP, a renewable project is a **project which** is an "eligible energy resource" under the Renewable Energy Portfolio **Standards** Act of 2005, 26, Del. C. 352.

B. The Commission issue an order authorizing the Company to establish a regulatory asset / deferral account to capture incremental costs associated with the development and submission of the IRP and RFP and allow for full recovery, plus carrying charges, through the SOS process.

Respectfully submitted,

By:



Anthony Wilson
Associate General Counsel

August 1, 2006

Anthony Wilson, Esq. Todd L. Goodman, Esq.

Delmarva Power & Light Company 800 King Street, 5th Fl
Wilmington, DE 19801
302) 429-3061

Counsel for Delmarva Power

Exhibit 1

DELMARVA POWER & LIGHT COMPANY REQUEST FOR PROPOSALS

DELMARVA POWER & LIGHT COMPANY REQUEST FOR PROPOSALS INSTRUCTIONS TO BIDDERS

1. GENERAL

The purpose of this Request for Proposals (RFP) is to solicit proposals for the construction of New Generation Resource(s) (New Generation) within the State of Delaware that may result in Delmarva Power & Light Company (Delmarva or the Company) entering into a Power Purchase Agreement (PPA) to buy electric power (capacity, energy, and ancillary services) to supply a portion of Delmarva's Delaware Standard Offer Service (SOS) customer requirements. Such solicitation is required under the Electric Utility Retail Customer Supply Act of 2006 (the Act). Delmarva shall determine whether these proposal(s) meet all threshold requirements, and among those proposals, shall select the highest rated one(s) for evaluation under Delmarva's Integrated Resource Plan (IRP). Those selected proposals satisfying Delmarva's needs under the IRP may be invited to sign a power purchase agreement (PPA) with the utility.

1.1 INTRODUCTION

Delmarva is seeking proposals for the purchase of electric power subject to the following:

1. The construction of New Generation shall be located in Delaware and commercially operable no later than June 1, 2013 and not prior to the execution of the PPA. New Generation is defined as any generation resource which adds net generating capacity in the State. If bidders propose to repower an existing facility, Delmarva shall only consider the incremental capacity compared to the megawatts in place before the repowering took place. For example, if a 150 MW facility is repowered, and replaced with a 200 MW unit, the amount that may be offered to Delmarva under this RFP shall be 50 MW. By contrast, if a bidder retires an existing generating unit, and adds another unit in the same location, the full amount of megawatts (up to 200 MW) shall be considered. Bidders may not retire a unit and propose to bring that unit back on line in order to qualify under this RFP; in that case, only incremental additions would be evaluated.

Technically, New Generation must satisfy the requirements of Manual 14A of the Pennsylvania-New Jersey-Maryland Interconnection ("PJM") power pool and must satisfy, where applicable (e.g. for fossil generators emitting air pollutants) the permitting requirements for a major stationary source as defined in 40 C.F.R. Section 52.21(b)(1)(i) or 40 C.F.R. Section 52.24(f)(4)(i) and/or a modification to an existing source which is a major modification as defined in 40 C.F.R. Section 52.2J (b)(2)(i) or 40 C.F.R. Section 52.24(f)(5)(i) and/or the permitting requirements of the Delaware Regulations Governing the Control of Air Pollution.

Under a PPA, Delmarva shall purchase up to 200 MW of capacity, energy and ancillary services. The proposed sale of capacity (defined as Unforced Capacity or "UCAP" as specified in PJM's Reliability Assurance Agreement or any successor agreement) shall not be less than 50 MW for non-renewable projects and not less than 25 MW for renewable projects. Capacity purchased will not exceed the UCAP delivered to PJM from the New Generation. Proposals for New Generation capable of

delivering UCAP in excess of that Capacity sold under the PPA are acceptable where the bidder recognizes that less than 100% of the UCAP from the New Generation would be purchased by Delmarva. Bluewater Wind is in general agreement with DP&L's rationale (as it was described at the August 18 workshop) for limiting the size of potential projects under this RFP so as not to depend heavily on a single source for SOS supply. However, the Proposed RFP seems to assume that all proposed projects would have identical capacity factors, and that this capacity factor would be 100%. However, many technologies, particularly those that H.B. 6 was clearly trying to encourage through this RFP (such as wind, which is mentioned in the law) have average capacity factors significantly less than 100%.

Furthermore, many generation technologies are more cost effective at larger scale, and other generation technologies (particularly renewable technologies which are well-suited to address the price stability and environmental goals of the RFP per H.B. 6) have widely varying capacity factors. Therefore, an unnecessary capacity cap is at odds with goals of the RFP per H.B. 6. We also note that H.B. 6 neither requires nor indicates any upper limit to the capacity that should be contracted as a result of this RFP.

So while we understand and agree with DP&L's need to put some limit to the amount of *supply* taken under this RFP, using a *capacity* limit as opposed to an *energy* limit would seem to be at cross-purposes with achieving the stated goal of H.B. 6. For these reasons, we respectfully request that the size limit to proposals be based on expected energy generation, and not a specific capacity. If the RFP were to specify an energy supply limit, respondents could then propose an amount of capacity as appropriate for the generation technology being proposed.

2. The level of energy purchased under the PPA shall be consistent with the type of capacity proposed (e.g. baseload, intermediate, peaking, or load-following). Energy from renewable capacity may be limited by the anticipated capacity factor of the type of renewable resource. What is the "anticipated capacity factor"? How is this defined? If the PJM methodology is to be followed (as 1.5 indicates: "Delmarva will contract to pay winning bidders only for the amount of capacity from the facility for which PJM will give Delmarva capacity credit") it should be cited here.
3. Bidders may offer terms for the PPA for a minimum of 10 years and a maximum of 25 years.
4. Bidders will provide a non-refundable bid fee of \$10,000 at the time that bids are submitted.

Delmarva is seeking proposals for a project or combinations of projects providing capacity and energy that are cost-effective, that offer rate stability to SOS customers, and that satisfy other criteria specified in this RFP. This RFP describes Delmarva's request and provides information and instructions to prospective bidders.

1.2 GENERATION TECHNOLOGY AND TYPE

As specified in the Act, Delmarva will favor projects that offer cost-effective alternatives for

price stability, long-term environmental benefits to the State, fuel diversity, improved reliability in Delaware, and utilize new or innovative baseload technology, brownfield or industrial sites, and an existing fuel and transmission

For purposes of this RFP, a renewable project is a *project* which is an "eligible energy resource" under the Renewable Energy Portfolio Standards Act of 2005, 26, Del. C. 352.

infrastructure, among other factors. Commercial operation dates prior to June 1, 2013 will be viewed more favorably.

1.3 LICENSES, PERMITS AND APPROVALS

Projects contracted under this RFP must receive all applicable local, state and federal licenses, permits, and approvals prior to commencing operation and sales to Delmarva. Under the PPA, many of these approvals will be required at interim stages of project development to provide assurance of project viability and desirability. It is the responsibility of the project developer to obtain all such approvals.

1.4 LOCATION

This solicitation is open to New Generation projects proposing to be located in the State of Delaware, either inside or outside Delmarva's service territory.

To be consistent with section 1.5, and so as to not unequally consider different forms of generation technologies, we would ask that the following language be added at the end of section 1.4: "For New Generation in or on Delaware's jurisdictional portion of the Delaware Bay or the Atlantic Ocean, whether the waters of the State of Delaware or the Waters of the United States or within its defined Exclusive Economic Zone from 12 to 200 Nautical Miles, "in Delaware" shall mean that the New Generation's power cables make landfall within the State of Delaware and originate in Delaware and or Federal waters only."

1.5 PRODUCTS PURCHASED

The bidder will be contractually committed to deliver energy, capacity and ancillary services [\[See Comment below on Ancillary Services\]](#) under the PPA, and to develop and construct the New Generation proposed.

Delmarva is interested in incremental UCAP (as defined in PJM's Reliability Assurance Agreement or any successor agreement) purchases from the facility that allow Delmarva to receive credit for the UCAP delivered to PJM. Delmarva will contract to pay winning bidders only for the amount of capacity from the facility for which PJM will give Delmarva capacity credit. The amount of UCAP that will be paid for is the amount of incremental UCAP that PJM assigns to the project and, if PJM has not assigned a UCAP amount at the time a PPA is executed, the PPA will allow for an automatic adjustment to amend the contractual UCAP amount to the level which PJM assigns, not to exceed 200 MW. The delivery point of this capacity is the Delmarva Zone.

The size and form of energy contract must be comparable to the energy output expectations of the New Generation. Delmarva will structure the energy contract based on a contractual capacity factor intended to reflect the operating characteristics of the New Generation whereby the bidder is at risk for under-performance. The delivery point is required to be in the Delmarva

Zone. Delmarva shall not be responsible for designating proposed projects as a network resource. Projects having near-term commencement dates will be viewed more favorably.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

The "Delivery Point" for contract energy shall be the Delmarva Zone. In the case of generation located in Delaware, the Interconnection Point will be the PJM bus to which the generator is electrically connected, or the closest location thereto monitored for Locational Marginal Price by PJM.

"Delmarva Zone" means that aggregate of busses as listed on the PJM website and aggregated by Delmarva.

Supply of Ancillary Services

Must the bidder supply ancillary services? According to HB 6, the products are "capacity and energy and *may* include ancillary electric products and environmental attributes." Therefore, the RFP should make explicit that in a fully responsive proposal it is not necessary to bid ancillary services, and that no points will be deducted from proposals that do not supply ancillary services. Nonetheless, Bluewater Wind notes that wind generators are usually able to provide utility-standard reactive power.

Value of Environmental Attributes

Bluewater cordially notes again that if the PPA requires the purchase of environmental attributes, the Buyer is effectively acquiring a valuable product for no cost (or penalizing a renewable generator if it proposes to sell the attribute at value.)

Environmental Attributes are valuable economically to Delmarva to satisfy its Delaware Renewable Portfolio Standard legal obligation, as well as the State's Clean Air Act and Clean Water Act requirements. In addition, these Attributes are ecologically valuable to the citizens of Delaware, in promoting a clean, healthy environment locally, and also regionally and globally helping to mitigate Climate Crisis effects such as sea level rise along the Delaware and Eastern Seaboard coasts. Therefore, these Environmental Attributes must be properly valued in the evaluation of the submissions by the various generation technologies.

1.6 BIDDER SELECTION

After the proposal evaluation and IRP process are complete, Delmarva reserves the right to select one or more of the proposals, to select any fraction of the 200 MW being solicited, or to select projects totaling more than 200 MW. Bluewater Wind echoes Delmarva's presentation at the August 18 workshop where the rationale for the 200 MW was detailed. Bluewater believes that a 200 MW nameplate capacity assumes a 100% capacity factor. Therefore, any New Generation bidding in this RFP would account for its expected capacity factor, such that a wind project with a 33-40% capacity factor would propose 500-600 MW of nameplate capacity. Delmarva may

also reject any and all proposals or waive any formality or technicality in its treatment of proposals received. A bidder who submits a proposal does so without recourse against Delmarva for either rejection by Delmarva or failure to execute an agreement with such a bidder for the purchase of electric power for any reason. The evaluation process is described in Section 2 below.

1.7 SUBMISSION OF PROPOSALS

Proposals must be finalized by December 22, 2006 and submitted to the web site described in Section 6.3. I-Iowever, proposals may be submitted at any time before that date, and bidders are encouraged to do so. As part of their proposals, bidders are required to provide all the information requested in the Bidder Response Forms, Forms B through R, provided as Attachment 2. The Notice of Intent form, Form A, is due by November 22, 2006.

If a proposal is submitted by December 8, 2006, Delmarva will complete the Non-Responsiveness Test described below and notify the bidder of any deficiencies, providing an opportunity for the bidder to correct such deficiencies by December 22, 2006. When Delmarva has completed the Non-Responsiveness and Threshold Tests, bidders will be notified that their proposals shall be considered final and will automatically move to the Detailed Evaluation phase. A detailed schedule of the RFP process is provided in Section 5 below. All proposal documents become the sole property of Delmarva once submitted, with the exception of any propriety material so marked.

1.8 REGULATORY OUT CLAUSE

Delmarva has included a "regulatory out" clause as a condition precedent in its model PPA that permits either party to terminate the contract in the event that the Public Service Commission of the State of Delaware, the Delaware Department of Natural Resources and Environmental Control, or any other regulatory agency which claims jurisdiction over the contract either does not approve the contract in a timely manner, or modifies the contract to impose additional conditions that are unacceptable to the affected parry.

Bluewater Wind concurs with the concept that the contract should be subject to PSC and DNREC approval. We would want to be certain that once such approval is obtained and the Seller proceeds with significant development that this clause does not become the basis for a future review and modification of the contract.

1.9 RFP ADMINISTRATION

Section 6 describes the administration of the RFP, including:

- Receipt of proposals
- Communications
- Documentation
- Disqualification
- Approval
- Non-Discrimination

2. PROPOSAL EVALUATION

2.1 INTRODUCTION AND OVERVIEW

Both the price and non-price factors associated with all proposals received will be evaluated

by Delmarva with assistance from ICF International (the Consultant), Delmarva and/or an affiliate of Delmarva may submit proposals, which will be evaluated under the same evaluation process as all other proposals, as identified in this RFP, and shall not receive any favorable treatment. The RFP development, evaluation criteria development, and evaluation processes are designed to ensure a fair, unbiased review of all proposals.

2.2 PROPOSAL EVALUATION PROCESS

The proposal evaluation process will culminate in the selection of an approved bidder(s), subject to the results of the Company's IRP to be filed with the Commission on or before December 1, 2006. The IRP process will evaluate available supply and demand-side options during a ten (10)-year planning period in order to provide efficient and reliable resources required over time to meet its customers' needs at a reasonable cost. The IRP will be amended after its filing date with the results from the RFP. If the winning proposal(s) results in a more cost-effective IRP, Delmarva will then negotiate with bidder(s) to execute a PPA.

The proposal evaluation process will be comprised of four steps. The first two steps are: the Non-Responsiveness Test and the Threshold Test. Only proposals which pass these two tests will proceed to the next steps. The third step will be a detailed Price and Non-Price evaluation (the Detailed Evaluation) of all remaining proposals. As the fourth step, Delmarva, if consistent with the IRP findings, will inform four Delaware public agencies of its choice(s), and those public agencies may review Delmarva's selection(s). These public agencies include the: 1) Public Service Commission; 2) Office of Management and Budget; 3) Controller General's Office; and 4) Energy Office. These agencies are expected to make their decision by February 28, 2007. If the public agencies approve, Delmarva will receive authority to sign a PPA with that bidder(s), subject to the results of the IRP process and a final Delmarva decision.

The purpose of each step that Delmarva will carry out and the process employed in each step are described in the following sections.

[RFP in relationship to IRP](#)

Bluewater Wind shares the concerns expressed by others at the August Workshop that the RFP does not correctly reflect the requirements of H.B. 6 with regard to the relationship between this RFP and DP&L's on-going Integrated Resource Planning. Specifically, H.B. 6 would seem to indicate clearly that this RFP and resulting capacity construction should take place "immediately". While the resulting new capacity should also clearly be "a part of" any future IRP, it seems apparent to us given the language of H.B. 6 that the RFP process should not in anyway be delayed or modified because of a pending IRP. On the contrary, the legislation provides a clear purpose for the RFP above and beyond the purposes of IRP alone, and provides a definitive timeline and bid selection process for the RFP that is aside from that established for the IRP.

This issue is of critical importance, as the Proposed RFP creates considerable uncertainty around likely winning bid prices and other terms, and even raises a question as to whether any proposals at all would ultimately be accepted. As a result many potential bidders may refrain from spending significant sums that will be required to file a proposal, and there will be less competition in response to the RFP.

At the very least, it would seem abundantly clear that H.B. 6 *allows* this RFP process to go forward without having to be delayed by - or respond to- any initial IRP. Therefore, given how important this issue is for a successful RFP process, we respectfully request that any reference to IRP be removed from the RFP, and that the time-line, process, and criteria used for the RFP reflect only those specified for the RFP in H.B. 6, subsection (d).

2.2.1 Non-Responsiveness Test

This first review of all the proposals received will ensure that bidders have provided all the information in the proper fashion to allow an equitable evaluation and to check that all information requirements have been met. Bidders submitting proposals by December 8, 2006 that are deemed non-responsive by Delmarva will be informed of such deficiency(ies) in time to revise their proposal by December 22, 2006 deadline, as described in Section 5. Proposals submitted after December 8, 2006 that are non-responsive will be rejected. For example, proposals may be deemed non-responsive if they have not provided all information in the Bidder Response Forms (Attachment 2), among other possible deficiencies.

2.2.2 Threshold Requirements Test

Delmarva will examine every proposal received to determine if the proposal fulfills the Threshold Requirements below. Each proposal must meet the Threshold Requirements to be eligible for Detailed Evaluation. Failure to meet any Threshold Requirement will result in the proposal being eliminated from further consideration. In addition, bidders are required to provide additional information in these and other areas in the Bidder Response Forms, Attachment 2.

There are a number of Threshold Requirements, including:

Filing - Each Bidder must submit the required Notice of Intent by 5 PM prevailing Eastern time, November 22, 2006.

Credit- This requirement has three sub-parts:

- 1) Each bidder must demonstrate that it has sufficient financial wherewithal to finance the project(s) being proposed. This may include evidence of the bidder's credit rating, short-term debt rating, total net worth, financial statements, liquidity and financial stability. Bidders must identify any prior project or corporate defaults, under the present or prior company names. *A requirement for an investment grade rating discriminates against smaller private companies. It may be possible to have the debt on the project rated as investment grade, but that will depend on the amount of equity and the strength of the Delmarva credit (The wind energy project rating is likely in the best case to be two notches below the utility's credit rating)*
- 2) The net worth of the bidder must be at least as large as the total capital that will be required for this project.

Bidders and/or guarantor must have an investment-grade rating for senior unsecured debt from Standard & Poors, Moody's or Fitch Ratings (other rating agencies shall not be accepted). If there are differences, the rating used shall be the lowest of those assigned by one of these rating agencies. In

the case where the bidder is not currently rated by Standard & Poors, Moody's or Fitch and a guarantor having an investment-grade rating is not provided, bidder must demonstrate to the satisfaction of Delmarva that they have the financial standing equivalent to an investment grade rating. The investment grade rating is a stringent and expensive requirement for a project-based bid. The rating on long term senior debt after the commercial operation date is possible but will be a function of the utility credit rating among other factors. It may be more advantageous to the Buyer to consider non investment-grade rated Sellers with a project finance structure where 1) there is an agreed gearing ratio, 2) a second lien is provided as collateral to Buyer, and 3) there are no other outside obligations of Seller (such as would be the case with a non project Seller) that could have adverse financial consequences for Seller.

Accounting- Delmarva, related to non-affiliated third-party bids, is unwilling to be subject to accounting and tax treatment that results from Variable Interest Entity treatment as set forth in Financial Accounting Standards Board (FASB) Interpretation No. 46 (revised December 2003) as issued and amended from time to time by FASB. Bluewater Wind concurs with this.

All bidder proposals will be assessed for appropriate accounting and/or tax treatment. Bidders shall supply Delmarva with all the information necessary to make such assessments. Such information may include, but is not limited to, data supporting the economic life, the fair market value, executory costs, non-executory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the bidder's proposal.

Siting- The bidder shall demonstrate that it has identified a site for capacity, and, if not owned by the bidder at time of Proposal submittal, shall demonstrate its ability to acquire or secure use of the site by holding a purchase option or a binding letter of intent from the site owner(s). This section of the Proposed RFP does not accommodate offshore wind projects, since these projects cannot possibly meet the requirement to have "a purchase option or a binding letter of intent from the site owner(s)", as offshore sites are of course not subject to such site control. The RFP should specifically address offshore wind projects regarding siting in order to create a level playing field among different generation technologies. For offshore wind projects, in place of requiring a demonstration of site control, the RFP should be modified to require that the respondent 1) demonstrate the feasibility of securing necessary federal and state permits and licenses, and 2) provide copies of written requests from the developer to appropriate federal and state agencies to begin permitting and licensing specific offshore sites. Precedent for this is found in the Long Island Power Authority Offshore Wind RFP of May 2003.

Environmental- The bidder shall provide a reasonable schedule for acquisition of all necessary permits and demonstrate its ability to comply with all applicable environmental laws and regulations.

Engineering- The bidder shall provide a preliminary engineering study that includes: (1) general arrangement and plot plan showing evidence of the current zoning classification of

the site and any necessary rights-of-way, size, fuel supply route, fuel storage, cooling source, waste disposal, interconnection point, etc.; (2) specific type of generation technology to be used; and (3) associated emission control equipment required to satisfy environmental regulations.

Contract- The bidder agrees with the Term Sheet provided as Attachment 1 to this RFP, which identifies terms and conditions that Delmarva considers to be non-negotiable. Bidders submitting a Notice of Intent shall receive access to a Power Purchase Agreement for review one month before bids are due. There will be an opportunity for bidders to suggest changes to PPA provisions other than those identified in the Term Sheet.

Security- The bidder must agree to post security/collateral, as described in Section 3.4 below and in the PPA. Further, Delmarva will not accept proposals that require Delmarva to post margin on behalf of the project.

2.2.3 Detailed Evaluation

The Detailed Evaluation will lead to the selection of a proposed project(s) for inclusion in the Company's IRP that may result in the final negotiation of a power purchase agreement(s). Bidders that provide proposals under consideration in the Detailed Evaluation may be contacted if Delmarva has requests for information. During the Detailed Evaluation both price and non-price factors will be considered simultaneously and weighted at **60% and 40%**, respectively.

Following the Detailed Evaluation, Delmarva may negotiate with the remaining bidders to obtain better terms and mutually advantageous changes to proposals. These negotiations and a bidder's flexibility in negotiating will influence the selection of "winners".

The price factors, the non-price factors and the relative weighting between price and non-price factors to be used in the Detailed Evaluation are provided in sections 2.3 and 2.4 below.

2.3 PRICE FACTOR EVALUATION [60 Points out of 100 Possible]

All proposals will be evaluated on price and operational performance factors in the Price Evaluation through simulation of the impact of the proposal on the costs paid by Delmarva's SOS customers. As explained in the Point Assignment section below, the proposal with the lowest and most stable cost shall receive 100% of the points available for the Price Evaluation, and all other bids will be scaled to that proposal.

Delmarva will consider the following components of SOS cost:

- PPA Capacity Price
- PPA Energy Price
- Residual SOS Cost Impact

- T&D Project Impact
- Transmission Losses
- Imputed Debt Offset
- Loss under Probability of Default

All proposals will be evaluated for their effect on total Delmarva SOS costs, both through changes in the market prices and the provision of energy and capacity. Further, the evaluation will consider the expected cost and variation in the expected costs. Delmarva will provide 213 of the points (40 points) for the lowest expected price and will provide 1/3 of the points (20 points) for the project(s) that provide the most stable prices, as captured in the uncertainty component of the PPA Energy Price, Residual SOS Cost and the Loss under Probability of Default. These items measure the extent to which Delmarva's SOS customers are at risk for price fluctuation, and Delmarva shall rank proposals according to the magnitude of this risk. Among other possible measures, Delmarva expects to use the levelized cost per kWh and the dollar magnitude of risk for Delmarva SOS customers.

Below please find the extensive Bluewater Wind comments on a host of topics related to 2.3 Price Factor Evaluation, with Bluewater subheadings added for clarity:

H.B. 6 is very explicit as to the purposes of the RFP, and therefore the selection criteria to be used¹:

1. Energy price stability
2. Reductions in environmental impact
3. Benefits of adopting new and emerging technology
4. Siting feasibility
5. Terms and conditions concerning the sale of energy output from such facilities.

H.B. 6 contains no requirement or allowance for obtaining simply the lowest priced power, although it does refer to cost-effectively meeting the above criteria.

Given the above legislative requirements, Bluewater Wind respectfully recommends that the scoring system in the Proposed RFP be substantially revised so as reflect the following order of priorities:

1) Price Stability: Section 6(d) of H.B. 6, which contains the legislative mandate for the RFP, begins: "[...] to immediately attempt to stabilize the long-term outlook for Standard Offer Supply in the DP&L service territory, DP&L shall file [...] a proposal to obtain long-term contracts." Price stability is then listed first on the list of selection criteria for the RFP listed in that same section. Line 144 articulates the legislative intent of the RFP again when it gives the Commission and the Energy Office the authority to approve or modify the RFP to achieve the goals related to price stability, environmental benefits, reliability, efficiency, and new or innovate technologies, without reference to the lowest cost generation source.

Bluewater Wind is in agreement with other comments that it is therefore abundantly clear that the primary purpose of the RFP is to capture price *stability* benefits for SOS customers. Yet only twenty points are awarded to the "proposal with the greatest level of

¹ Section 6 (d): "Such RFP shall also set forth proposed selection criteria based on the cost-effectiveness of the project in producing energy price stability, reductions in environmental impact, benefits of adopting new and emerging technology, siting feasibility and terms and conditions concerning the sale of energy output from such facilities."

price stability". Therefore, we recommend that the point system be altered so that price stability is given the greatest number of points. Furthermore, given that H.B. 6 explicitly states that contracts awarded under this RFP may be for as long as 25 years, we also recommend 25 years be the standard period over which price stability of the proposals are evaluated. Finally, Bluewater Wind notes that a wind project PPA will be for a stable and legally-binding price over the life of the PPA because of the absence of any fuel costs and very modest O&M costs.

2) Environmental Impacts and or Benefits: After price stability, reductions in environmental impacts are second in the listing of required selection criteria in H.B. 6. Environmental benefits are then listed again as a value that should be elicited from the RFP by the Commission and Energy Office. It is of course assumed that any proposed project would meet existing environmental regulations. Therefore, we recommend that *positive* environmental benefits (as opposed to only managing negative environmental impacts from the project itself) be given the next level of importance in the scoring system, after price stability. By positive environmental benefits we mean environmental benefits resulting from the project that go above and beyond meeting environmental permitting requirements for the construction and operation of the plant itself.

3) Fuel Diversity and New Technologies: H.B. 6 indicates that adaptation of new and emerging technologies is to be criteria for selection. H.B. 6 also requires the Commission and Energy Office to elicit and recognize the value of fuel diversity through the RFP prices. Although fuel diversity and new technologies are not strictly the same, clearly one of the benefits of adopting some new technologies is to diversify fuel supply (or in the case of wind and solar, displace the need for fuel supply altogether). Therefore, we recommend that new and emerging technologies be given the third level importance in the scoring system.

4) Siting Feasibility and 5) Terms and Conditions: These two selection criteria are listed last in H.B. 6, and are generally straight forward and common sense criteria that – unlike the first three criteria— would not likely be considered as a basis for a change in state energy policy. We assume they were included in the specified list of criteria for the sake of completeness. For this reason, we recommend that these two remaining criteria receive equal ranking in the point system, and that their ranking be last among the specified criteria.

6) Lowest Price and Stable Price: Lowest price should not unto itself be a selection criterion in the RFP. H.B. 6 simply does not stipulate "lowest cost," per se, as a criterion in the selection process, even as it stipulates five other criteria. Therefore, the 40 points awarded for "lowest expected price" should instead be allocated among the five legislatively required criteria listed above, as appropriate given the relative importance we suggest above.

At the same time, the scoring system should objectively determine which proposals most cost effectively achieve the legislatively required criteria listed above, so as to be in compliance with lines 117 – 125 of H.B. 6, which requires that the above criteria be met cost-effectively. (Again, this is distinct from simply having the cheapest cost). It must be kept in mind that the purpose of the RFP, as stated at the start of Section 6.d of H.B. 6 is: "to immediately attempt to *stabilize* the long-term outlook for Standard Offer Supply in the DP&L service territory" (*italics added*). We believe a scoring system using the legislatively required selection criteria, and prioritized based on other language in the law,

more accurately reflects the intent of H.B. 6.

7) Calculating Price Stability: Regardless of what ranking Price Stability is ultimately given in the selection criteria, the means by which “level of price stability” is to be calculated is not clear in the Proposed RFP. In order to have a transparent and objective selection process, an explicit calculation for determining price stability should be specified. Stating that “the uncertainty component of the PPA Energy Price, Residual SOS Cost and the Loss under Probability of Default” reflects instability doesn’t shed any further light on this issue, i.e., how stability will be measured.

Related to this, the time period over which price stability is to be assessed is not specified, and as described above, Bluewater Wind recommends 25 years.

Further, the methodology described in this section assumes that *one* bidder will both bid the lowest and most stable costs: “the proposal with the lowest and most stable cost shall receive 100% of the points available for the Price Evaluation, and all other bids will be scaled to that proposal.” The RFP does not seem to accommodate the possibility (if not probability) that one bidder would have the lowest initial costs, and another the most stable life-time costs. In order to resolve this problem, and since we do not believe that lowest cost unto itself is an acceptable selection criteria anyway (as described above), we recommend that references to “lowest cost” simply be removed from the RFP and replaced by a scoring system that rewards the most cost-effective means of achieving the legislatively mandated criteria of the RFP.

H.B. 6 (line 105) stipulates that the goal of the IRP is to evaluate systematically all available supply options during a 10-year planning period in order to acquire sufficient, efficient, and reliable resources to meet its customers’ needs at a minimal cost. This language emphasizes power that can be offered: 1) efficiently, thereby reducing charges associated with transmission over long distances; 2) sufficiently, in enough quantity; and 3) reliably, power that is available when customers need it. Cost is referenced in the context of minimizing cost, which is different than lowest cost. While line 126 does mention lowest reasonable cost, it is prefaced with the word “reasonable” and is intended as a consideration of achieving the stability and environmental benefits articulated in lines 117 – 125 of H.B. 6. This point is underscored in line 141 in which the legislature notes, “Such RFP shall also set forth proposed selection criteria based on the cost-effectiveness of the project in producing energy price stability, reductions in environmental impact, benefits of adopting new and emerging technology, siting feasibility and terms and conditions concerning the sale of energy output from such facilities”.

8) Ranking Bids on the Cost Criteria: The last sentence of the second paragraph of Section 2.3 above defines “cost” as “levelized cost per kWh” and instability as “the dollar magnitude of risk for Delmarva SOS customers.” Both these metrics should be further defined through calculation methodologies – though it is unclear how this will be objectively done for risk. In addition, what are the “other possible measures” that Delmarva will use to rank the proposals with respect to cost? No new metrics should be introduced once the RFP is finalized.

How will these various components of SOS cost be weighted? Will some be valued more than others, e.g., energy price compared with transmission losses?

Bluewater notes the advantage of the modularity of wind projects. The low likelihood of failure of multiple units (let alone all units) is a notable utility and system benefit from a

wind farm.

The RFP states that for Energy Price, Delmarva will either use a starting price with an escalator, or for projects based on the PJM market price, it will calculate relevant future prices and assign them to the project. Delmarva does not give the methodology of how it will calculate the prices, only how projects will be ranked against each other in Section 2.5 of the RFP. Does Delmarva include any factor for unanticipated rises in price, such as what happened in the Northeast natural gas markets over the past several years? Basic economics dictate that as global pressures on hydrocarbon resources increase, any free-fuel resource, such as wind under long-term contracts, becomes a much more attractive option to Delmarva's SOS customers. Further, does Delmarva anticipate the likelihood of a significant supply disruption and the impact such an event would have on all hydrocarbons, including coal? What about delivery system constraints on coal? Fuel diversity, as appropriately noted in H.B. 6, is a significant benefit for Delmarva, but Delmarva's unclear methodology does not allow for appropriate calculation of this benefit from wind.

9) Ancillary Services: Bluewater Wind respectfully believes that whether or not good utility practice suggests ancillary services be provided, their provision should not be required, nor should they be part of the Proposed RFP ranking or bidder evaluations. If ancillary services must be included in the final RFP and part of the ranking, how will differences between the bidders in the *number* of ancillary services each provides be taken into account? For example, how will Bidder A, expecting to provide reactive power only, be compared with Bidder B, anticipating to supply all ancillary services – reactive power, load following, spinning reserves, non-spinning reserves and replacement reserves?

10) Environmental Track Record: The RFP should ask for the bidder's environmental track record with respect to operating and maintaining power facilities. Information should be provided by the bidder which demonstrates the bidder's history at protecting the air, water, land, and living organisms. Disclosures should include waste emission violations, fines, or citations. This information could be incorporated into the Environmental Compatibility section.

2.3.1 PPA Capacity Price

The bidder shall provide Delmarva with a levelized Capacity price in dollars per kilowatt month (\$/kW-month). Variable capacity payments shall not be acceptable. Capacity may be provided only from the bidder's project(s), and must be reliable as determined by whether it qualifies for UCAP in PJM at the time the PPA is signed. Capacity Price reflects payments Delmarva would make to the project owner for having the generating capacity available to provide electricity to Delmarva, regardless of the number of operating hours or the level at which the project is dispatched. As Delmarva is a summer peaking utility, Capacity Prices must be based on a net summer capacity basis. All projects bid will be evaluated at the target equivalent availability specified by the bidder, unless in Delmarva's judgment, the target availability specified is higher or lower than the proposed generation technology or facility design.

If PJM has not assigned a UCAP amount at the time a PPA is executed, the PPA will allow for an automatic adjustment to amend the contractual UCAP amount to the level

which PJM assigns, not to exceed 200 MW.

UCAP

Does the methodology here for assigning UCAP differs from that of PJM, in that PJM does not refer explicitly to "net summer capacity." The RFP should be clear about when PJM's rules should be followed and when new ones specific to this RFP are in use.

How would the initial Unforced Capacity Factor administratively set by PJM at 20% of the Installed Capacity Rating of an offshore wind facility affect the amount of energy purchased from such a wind facility under a PPA? Bluewater notes that Delaware offshore wind data plus operational data from today's 24 functioning offshore wind farms in 8 countries show that a capacity factor of more than 20% will be readily achieved and can be warrantied and guaranteed against a reference meteorological tower. Over the operational life, a wind farm will increase its UCAP and further benefit the electric grid and its operators.

PJM wind capacity rules provide for an adjustment to the UCAP rating awarded to wind generation facilities by means of a three-year rolling average. How will the PPA allow for an automatic adjustment to amend the contractual UCAP amount to the level which PJM assigns?

2.3.2 PPA Energy Price

Bidders shall be paid for energy based on the price offered in cents per kWh. This may consist of a starting price plus an escalator (see Section 3.1), or other means of demonstrating the energy price that Delmarva will pay for energy on an hourly or other basis. As with the capacity price, this price shall be discounted back to the present to develop a common basis for comparison between project(s). For proposals that depend - in whole or in part - on the PJM market price for power, Delmarva shall calculate the relevant future prices and assign them to the project(s).

The amount of energy to be purchased by Delmarva will not exceed the amount that the New Generation facility could generate at its full nameplate rating or 200MW, whichever is less.

What discount rate will be used to discount the PPA energy price "back to the present?"

What does this statement mean: "For proposals that depend . . . on the PJM market price for power, Delmarva shall calculate the relevant future prices and assign them to the project(s)"? Under this scenario, what bid price would be submitted? How would this price be compared with stable-price offers?

2.3.3 Residual SOS Cost Impact

This is the impact (positive or negative, expense or savings) that each proposal is projected to make on Delmarva's total system SOS costs. This factor will take into consideration the cost of other sources of power that Delmarva will use to satisfy the needs of SOS customers

once the proposed project(s) comes on line.

The Residual SOS Cost Impact will be estimated using computer models to simulate Delmarva's system with both existing and new generating units. Proposed projects will be modeled individually and potentially in combination to determine which proposals offer the greatest cost savings. The Bidder Response Forms in Attachment 2 require the bidder to provide information that will support this analysis. Supply additions in excess of the contracted quantity will be evaluated in this analysis.

The Residual SOS Cost Impact will be determined by combining a project's impact under a base scenario with high and low price scenarios to determine the effects of prices that are higher and lower than those anticipated. Also, Delmarva will take price variability into account in the Detailed Evaluation.

2.3.4 T&D Project Impact

T&D Project Impact represents the savings or expense a project causes Delmarva to incur by allowing Delmarva to defer or causing Delmarva to advance planned capital improvement expenditures to its transmission and distribution system. The T&D impact will provide a quantitative measure of the impact on system reliability and overall planning implications. The cost of any incremental network transmission cost or savings will be added to the cost of the proposal for purposes of Price Evaluation. This analysis will also assess the benefit or cost of other transmission projects that would be deferred or accelerated as a result of the proposed project(s).

Based on information submitted by November 22, 2006, Delmarva will prepare a preliminary evaluation of the impact of the project on the need for network transmission upgrades. Delmarva will analyze the impact of the generation project using NM long-term planning load flow cases. To support this analysis, bidders are required to provide certain transmission-related information, including the interconnection point and the transmission voltage level at which they intend to interconnect to the network. Bidders shall provide this information with their Notice of Intent.

Delmarva will assume that bidders will include the cost of direct interconnection at an appropriate substation in their proposals, but unless otherwise indicated, will assume that the cost of network upgrades has not been included.

The evaluation of transmission impacts by Delmarva will be preliminary and used for bid evaluation only. Bidders will be required to submit an application to PJM for feasibility and impact studies and follow the PJM queuing process to determine overall system impact. Costs for electrical interconnection and upgrades are the bidder's responsibility.

2.3.5 Transmission Savings or Losses

This price factor will measure the value of energy saved or lost by virtue of the project operating and reducing Delmarva's overall transmission system energy losses. Delmarva will calculate these savings or losses for every project relative to a reference case utilizing a computer model(s).

2.3.6 Imputed Debt Offset

Debt rating agencies view long-term PPAs as debt-like in nature. Typically, a rating agency will factor a percentage of the net present value ("NPV") of a PPA's capacity payments as debt in their quantitative assessment of a utility's credit quality. Each bid will be evaluated and a cost assigned to account for the incremental equity required to return Delmarva's capital structure to the ratios that would be in place excluding a PPA being imputed as debt by the rating agencies.

Delmarva will assess the incremental equity amount to be equal to, at a minimum, 50% of the NPV of the bid's capacity payment (a percentage of the energy price may be included if Delmarva concludes that a portion of the bid's energy component would be imputed as debt by the rating agencies in their assessment of Delmarva's credit worthiness).

Bluewater Wind fully understands the utility's concern regarding the impact the PPA will have upon its balance sheet. Since the imputation is based on capacity payments and *may* include imputation of some energy costs, Bluewater Wind respectfully seeks clarification of the circumstances of the latter—since a wind project will have a lower imputed capacity and will have most of its revenue through energy payments.

2.3.7 Loss under Probability of Default

Each bidder will be evaluated for the impact on the overall system costs which Delmarva would experience under a default situation under the contract. This Price Factor will address the potential economic cost impact to Delmarva end-use customers based on a mark-to-market assessment of the overall exposure under the probability of a default situation.

This analysis will assess the credit risk of the bidder proposal using measurements of:

Default probability - The likelihood that the bidder will default on its obligation at some point over the life of the PPA agreement. The default probability may be considered over multiple time horizons. Default probabilities will be calculated based on the bidder's current credit quality and the likelihood of a default based on that current standing. If there is a difference between the ratings provided by the three major rating agencies (Standard & Poors, Moody's and Fitch), the lowest rating shall be used. Bidders are required to provide detailed financial information in the bidder forms which will be utilized in this analysis.

Credit exposure - The credit exposure will be measured as the mark-to-market value (measured as expected replacement cost) of the contract at the time of the default. The exposure will consider the term of the contract for this analysis and the forward market prices anticipated under the computer simulation described above (see Residual SOS).

Recovery rate - The credit exposure determined above will be reduced by the expected fraction of the credit exposure which may be recovered through bankruptcy

proceedings or some other form of settlement in the event of a default.

The overall exposure (net of potential recovery) will be assessed as the net present value of the exposure for Delmarva's SOS customers.

2.4 NON-PRICE FACTOR EVALUATION [40 Points out of 100 Possible] Delmarva will also use non-price factors to evaluate the development and operational benefits and risks of each proposed project. Delmarva will use the non-price factors and relative values shown below.

Non-Price Factor Evaluation

In addition to attempting immediately to stabilize the long-term outlook for Standard Offer Supply, H.B. 6 specifies a number of non-price criteria that are required to be considered:

- 1) Resources that utilize new or innovative baseload technologies;
- 2) Resources that provide short or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power);
- 3) Facilities that have existing fuel and transmission infrastructure;
- 4) Facilities that utilize existing brownfield or industrial sites;
- 5) Resources that promote fuel diversity;
- 6) Resources or facilities that support or improve reliability; or
- 7) Resources that encourage price stability.

Given the above legislative mandate, why are non-price factors only 40% of the ranking points when price is mentioned in only one of the five criteria established by H.B. 6?

2.4.1

Non-Price Factor Evaluation Criteria and Weightings

	<u>Point</u>
A. Environmental Compatibility	7
B. Operation Date and its Certainty	4
C. Reliability of Technology	5
D. Fuel Diversity	7
E. Site Development	5
F. Bidder Experience, Safety and Staffing	5
G. Financial Plan	5
H. Contract Terms	2
Total Non-Price Points	40

- A: Environmental Compatibility

- H.B. 6 seeks “reductions in environmental impact” not “environmental compatibility.”
 - H.B. 6 lists “reductions in environmental impact” as second in the list of five criteria – yet the environment only gets 7% of the points in the Proposed RFP.
- D: Fuel Diversity
 - While this is stated as a goal in H.B. 6, the factor should not be considered as an environmental goal necessarily. For instance, burning natural gas and fuel oil would achieve some degree of fuel diversity with no environmental benefits.

2.4.2 Non-Price Factors

This section describes the factors that Delmarva will take into account in assigning points in the Detailed Evaluation for non-price factors. Except as noted, bidders shall use the response forms provided with this RFP to provide this information, and may submit supplemental information as required. Delmarva will evaluate proposals with more or some of these features more favorably than those that have fewer or none of them.

Non-Price Factors

The sentence in the first paragraph which reads, “Delmarva will evaluate proposals with more or some of these features more favorably than those that have fewer or none of them?” is ambiguous. How will these “features” be quantified?

A. Environmental Compatibility [7 points]

Criteria for evaluating the environmental aspects of the new power generation resource will include reductions in environmental impact, benefits of adopting new and emerging technology, and siting feasibility. A number of these features may be conditions required under applicable permits. Also, some of the value of environmental features will be captured in the pricing, which must include costs for the generation project(s) to meet environmental requirements. In general, proposals will receive favorable scoring only to the extent that they demonstrate that their project(s) exceed regulatory requirements. Examples of the features that may meet these criteria include:

(1) Environmental Quality and Natural Resource Management Issues

Reductions in the level of air emissions (e.g., this may include consideration of such factors as: high levels of renewable fuel use; high generation efficiency; low levels of regulated air emissions, including particulate matter; high levels of air emission offsets (e.g., NOx credits) obtained through over-control of sources; low visibility impacts; and low emissions of greenhouse gases; state-of-the-art combustion technology).

Impacts on water emissions and quality (e.g., this may include consideration of such factors as: reductions of nitrogen loadings to the Delaware Bay; low consumptive use of groundwater or non-tidal off-site surface water; limited use of impervious covers; effectiveness of storm water management; use of waste or other reclaimed water particularly if it is not expected to be returned to non-tidal rivers or streams or is returned to tidal waters; on-site water storage during periods of low flow).

Land impacts, which may include such factors as the enhancement of habitat for living resources (fish, wildlife, birds); compatibility with State land use policies including coastal zone protection, agricultural land protection, protection of state-designated scenic byways; few nearby land uses with which it is incompatible; and the length of corridors needed to connect to fuel sources and the electric transmission grid.

Environmental Compatibility

Bluewater Wind does not believe the following achievement necessarily denotes a project worthy of obtaining more points from an environmental perspective, "In general, proposals will receive favorable scoring only to the extent that they demonstrate that their project(s) exceed regulatory requirements?" In one way of reading, this is perhaps a minimalist look at environmental quality, but if this metric is to be used, how can it be quantified? How much more favorably will a wind farm with zero emissions be treated than a fossil-fuel plant that is just a little bit cleaner than its permit requires? Or will they both get the same amount of credit simply for exceeding the standard?

In general, since the environment is a major consideration of H.B. 6, this rating system should be more rigorous and employ standardized scoring.

Under (1) Environmental Quality and Natural Resource Management Issues: Will these impact reductions be quantified and will the degree of improvement matter – e.g., will wind get more points than a coal fired plant with scrubber technology, which mitigates, but does not eliminate pollution and especially CO₂, where there is no commercially viable technology for carbon sequestration anywhere in the world.

Given the fact that Delaware recently joined the Regional Greenhouse Gas Initiative, and therefore will be seeking cost effective means to reduce CO₂ emissions, the scoring system should utilize an objective means for a relative evaluation of the proposals received of 1) amount of avoided greenhouse gas emissions, and 2) relative costs for achieving these avoided emissions.

B. Operation Date and its Certainty [4 points]

Nearer-term in-service dates will be favored. Each proposal will be judged as to the reasonableness of its project plan in terms of meeting its proposed commercial operation date. Although certain categories contained in this criterion are also addressed in other criteria (e.g., environmental permitting), this criterion is limited to timing issues and possible concerns about in-service dates.

C. Reliability of Technology and Innovation [5 points]

Projects will be judged on the technical maturity of the generating technology specified. Points will be awarded on the basis of the technology demonstrating the ability to meet availability requirements during commercial operation. Maximum points will be awarded to those technologies which have achieved the target availability specified by the bidder over at least three consecutive years of commercial operation in the same configuration utilizing the same vendor's major components as those contained in the bid. Minimum points will be

awarded to those technologies that have never been placed in commercial operation.

Bids will also be favored based on the relative degree of complexity of the generation technology proposed. Technologies requiring the least degree of system complexity (i.e., fuel handling systems, waste disposal systems, etc.) will score higher than those with higher degrees of complexity. For example, gas-fired combined cycle plants would score higher than coal-fired steam plants with respect to this criterion.

As required under the Act, Delmarva will provide a preference for projects using innovative technology (e.g., coal gasification), based on the performance guarantees offered by the bidder.

Bluewater reiterates there is no separate rating category for "new and emerging technology," the third criterion of H.B. 6. This section judges only the reliability of technology. Offshore wind in the U.S. in 2006 can be fairly called "innovative technology" though it is deployed in eight European countries, and turbines have been continuously operational since 1991. U.S. Offshore wind can be deemed reliable with manufacturer warranties for up to ten years, designed availability rates of over 96%, and robust insurance-backed, performance guarantees of electrical output, referenced against an independently-tested power curve and compared with a site meteorological tower.

Delmarva prefers projects providing energy and capacity from renewable sources and facilities that use solid fuel. Projects that use diverse fuels or several sources will be favored over those that use a single fuel or fuel source. This factor is also incorporated into the price evaluation with regard to the stability of pricing that such projects may provide.

Fuel Diversity

Why is there a preference now and for the life of the PPA for solid over liquid or gas fuel? Is it not reasonable to assume that the relative prices of these fuels will change over time? In addition, would wind power necessarily lose points under fuel diversity criteria, since it uses only *one* type of "fuel?" If so, this is contrary to H.B. 6. The basis of awarding points should be whether the proposal increases the diversity of fuel used in DP&L's service territory, not whether an individual facility uses multiple types of fuel.

For the above reasons, this scoring category should not necessarily be considered "environmental."

D. Site Development

[5 points]

This factor shall include a number of items with regard to the provision of a siting plan and socioeconomic factors, as follows:

(1) Siting Plan

The bidder will identify its site acquisition, zoning and development plans for new generating facility or the expansion of existing facilities, including fuel, water or transmission

infrastructure. This shall identify the local, State or Federal entities from which approvals must be obtained and the bidders' plan for doing so. This plan shall include but not be limited to these items:

- Identify the site where the project will be located. Indicate the total acreage of the site. Provide a map showing the location of key facilities. Show anticipated placement of all project facilities. Include a map that indicates the location of the transmission line with which the project will be interconnected.
- Provide a list of leases, easements, and/or other ownership documents that demonstrate that the bidder has control of the intended project properties and has the legal right to construct, interconnect, operate and maintain the project described.
- Provide a description of its proximity to inhabited structures, and its proximity to areas that may be sensitive from an environmental, cultural, security and other perspective.
- If not covered in the first bullet above, provide a written description of all material applications, permits and approvals required to construct and operate the generating facility and all associated interconnecting utilities.
- Describe the bidder's plan for the acquisition and delivery of fuel(s) to the project site(s), and for the interconnection of the project to the grid
- Indicate whether the site is located in an existing brownfield or industrial location.

(2) Socioeconomic Issues

The bidder shall identify the extent to which the project(s):

- Does not raise environmental equity issues
- Minimizes impacts on transportation systems and traffic
- Enhances economic and community development
- Has minimal aesthetic and noise impacts
- Minimizes impacts on historic and archaeological resources

F. Bidder Experience, Safety and Staffing Plan [5 points]

Delmarva desires bidders with demonstrated project management and financial capabilities. In its evaluation process, Delmarva will consider the qualifications and experience of key management personnel of the bidder's firm as well as the overall qualifications and experience of the bidder related to functions such as construction, operations, fuel management, regulatory relations, finance and risk management. This information is not part of the response forms, and bidders shall provide this separately in their proposals.

- Please provide a description of relevant experience and a list of previous successful power projects for which the bidder has been responsible. This shall include the bidder's track record in bringing projects to fruition on time or in advance of the required dates.

Safety is of real importance to Delmarva. The bidder shall provide its track record for safe operation on previous projects, and its plan for ensuring that operations at the proposed site(s) will be safe. Bluewater agrees safety is of "real importance", and suggests that the entire supply chain safety record, and forecasts of injuries based on OSHA or comparable metrics, be included.

- Provide a list of the names, biographies and responsibilities, relevant experience and professional references for each member of the development team that will be responsible for the following areas: plant management, engineering/construction, safety, financial, environmental, fuel acquisition and operations. This requirement holds true for near-term projects in particular. If such personnel have not been identified due to the projected date of operations (e.g., for a plant scheduled to come on line in 2013), the bidder shall provide evidence that it has a pool of talent with experience such that they will be able to ably carry out each of these functions.

G. Financial Plan [5 points]

Bidders will be judged on their plan and ability to finance the project's development, including the provision of project equity. For project financing, bidders will submit evidence of commitments from financial institutions and a plan as to how the project will be financed. This will include the proposed funding source(s) or guarantor(s) during project development, construction, and long-term financing. For corporate financing, the bidder shall demonstrate its financial strength (e.g., financial statements, corporate ratings, etc.), and evidence of relationships with financial institutions that would provide sufficient debt capital at each stage of project development. As outlined below, bidders will also be required to provide certain amounts of security, both before and after the in-service date of the proposed Capacity, to mitigate the impact of potential default or withdrawal. Should Delmarva provide a proposal, it would not be required to provide such security.

H. Contract Terms [2 points]

The attached Term Sheet (Attachment 1) provides the non-negotiable legal terms governing the purchase of energy and capacity which Delmarva will make from the successful bidder(s). Bidders shall receive access to the full PPA once they file a Notice of Intent with Delmarva. Bidders shall review this document and, if the bidder would like any changes to those sections not listed in the Term Sheet, they shall submit a Redlined version by the due date for proposals, in MSWord, showing such requested changes. Delmarva will consider the extent and significance of changes requested by a bidder to the PPA as part of the bid evaluation process, and will favor those bids with the fewest and least substantive changes.

2.5 POINT ASSIGNMENT

During the Detailed Evaluation Delmarva plans to evaluate proposals utilizing both the price and non-price criteria outlined in Sections 2.3 and 2.4. Proposals will be evaluated under each criterion and the dollar value of each price factor calculated and the point value of each non-price factor determined. This will result in each proposal having an evaluated price value or cost (expressed in dollars) based on the sum of the price factors and an evaluated non-price value (expressed in points) based on the sum of the non-price factors.

In order to allow the price and non-price values to be combined, the total evaluated price value will be converted to points and then added to the non-price value.

As mentioned above, price factors will be weighted at **60%** and non-price factors weighted at 40% in the Detailed Evaluation. This is accomplished by setting the maximum price score at **60** points and the maximum non-price score at **40** points.

As an example for the Price Evaluation, all proposals that pass the Non-Responsiveness and Threshold Tests shall be evaluated with regard to their value to Delmarva's SOS customers. As explained above, the price evaluation shall award 213 of the 60 available points in this category (40 points) to the proposal with the lowest expected cost to Delmarva's SOS customers, and 20 points to the proposal with the greatest level of expected price stability. All other proposals shall be scaled to the lowest cost proposal. For example, a proposal with a cost that is 5% higher than the proposal with the lowest cost shall receive a score of 40 times .95, or 38 points, and a proposal that has a cost that is 10% higher shall receive 40 times .90, or 36 points. In determining the value to Delmarva's SOS customers, the projects shall be evaluated under different scenarios.

The two elements, price stability and Loss under Probability of Default, constitute the remaining 20 points in the Price Evaluation. Both these factors measure the extent to which Delmarva's SOS customers are at risk for price fluctuation, and Delmarva shall rank proposals according to the magnitude of this risk. Delmarva shall measure stability by the range of the proposed prices from the reference case, and shall measure the Loss under Probability of Default as described in Section 2.3.7 above. The most stable pricing proposal shall receive all 20 points in this category, and other proposals shall be scaled to this offer. From a price stability perspective, the optimum bid would provide fixed prices with appropriate documentation for the full term of the proposed PPA from a highly credit-worthy entity.

For the Non-Price Evaluation, the evaluators shall use their professional judgment to assign scores that fall within the range of points available for each factor. Delmarva shall use experts in each of these areas to assign such points. If there is more than one evaluator for a given factor, the score for that factor shall be the average of the number of points assigned by each evaluator.

After its analysis is complete, Delmarva shall prepare a **confidential** report for the public agencies that provides its recommendations for the project(s) that should receive PPAs, subject to the IRP analysis, along with Delmarva's justification for such recommendations.

Point Assignment

This section could better quantify how "price stability" will be judged. Given its prominence in H.B. 6, a rigorous methodology to do so should be established. What is the "reference case" that will be used? How will it be selected?

Given the arguably greater importance of non-price factors (four out of five in H.B. 6), Bluewater Wind respectfully believes that something more than "professional judgment" should be followed in evaluating proposals in these areas. A rigorous, objective methodology should be set up.

3. PAYMENTS AND SECURITY

3.1 INTRODUCTION AND OVERVIEW

The Company will pay successful bidders separately for capacity and energy. A significant objective of this RFP is to procure long-term capacity and energy under a payment structure that provides price **stability** to Delmarva's customers. Bidders shall also provide and Delmarva shall pay for ancillary services as described below.

Bidders are required to offer fixed pricing, or prices tied to a publicly-available index, and must specify the index to which their bids will be tied. When indices are used in formulas in any component of the price bid, Delmarva recommends the bidder use the index value from the previous year (or period) when calculating prices during a given year (or period). Due to the time lag associated with the reporting of the actual index value, this will assist in the ability to administer price formulas in the contract.

The prices on which the various payments will be based are as follows:

- (1) Capacity Price - Delmarva will make monthly levelized capacity payments according to the specified Capacity Price tied to a stated MW level.
- (2) Energy Price - Monthly energy payments will be the product of the number of stated kWhs delivered to Delmarva's Zone in the month, times the amount in the winning bidder's Energy Price (cents/kWh), adjusted by indices, if so specified in the PPA.

Ancillary Services Price - Bidders will provide and be paid monthly for ancillary services. The bidder should specify the ancillary services that Delmarva will be provided. If such ancillary services are not under the direct dispatch and control of Delmarva, the bidder should specify the manner in which aggregate System revenues from those services will be determined and allocated to Delmarva. [Again, H.B. 6 does not stipulate that ancillary services be provided.](#)

3.2 START DATE FLEXIBILITY

Delmarva prefers that the capacity sought through this RFP become available no later than June 1, 2013. Delmarva prefers earlier commercial operation dates, particularly for those projects that provide price stability.

3.3 TERM OF CONTRACT

Delmarva will only consider proposals with capacity and energy terms of 10-25 years. If the facility proposed is not constructed, Delmarva shall have the option to reject the PPA.

3.4 SECURITY REQUIREMENTS

Bidders with whom contracts are established will be required to post Security which shall be available to pay any amount due Delmarva pursuant to the PPA, and to provide Delmarva with confidence that selected bidder will construct the Facility to meet the Construction Milestones described below. The security posting shall also

provide security to Delmarva to cover damages, including but not limited to replacement power costs and transaction costs for the Delmarva SOS customers, should the Facility fail to achieve the Commercial Operation Date or in the event of failure to meet the performance standards described in the PPA. If at any time after execution of the PPA the bidder(s) does not meet the security posting requirements, the PPA may be canceled at Delmarva's option as per the PPA's terms.

The Security Requirements are at the high end of what is seen in renewable energy PPAs across the country, generally in the \$30-\$60/kw range. In addition Bluewater notes that the utility can seek cover from other sources in a window of less than two years. The security should also have a definite cap on overall exposure under the PPA. Finally, it generally agreed that the security for a wind project be risk weighted, base on a probability analysis of only X turbines being out of service concurrently, thus resulting in a reduced security requirement. In terms of type of security, the utility should also consider taking a second lien on the project in lieu of either unsecured credit or a Letter of Credit.

The magnitude for the financial security required by Delmarva Power is not in conformance with other utilities' practice in wind PPAs. During partial loss of the wind facility, the financial risk to Delmarva Power would be the difference in energy purchased at the prevailing market price plus dislocation factors. The granular configuration of X wind turbine generators at Y MW each is a benefit for the project and such diversity would not be available from other types of generation. Overall reliability from significant outages is therefore greatly reduced.

We recommend that these considerations as well as historical evidence from the 24 European operating offshore facilities with almost 1,000 MW should be presented to the Delaware Public Service Commission as reasonable cause to reduce the onerous financial demonstrations as delineated within the RFP.

3.4.1 Security Schedule and Level

Before the in-service date(s) of the project(s), the bidder security posting will be as per the following schedule:

- 3.4.1.1 Bidder shall establish security at a level of \$50/kW of the contracted capacity value (MW) at the time the PPA is executed with Delmarva. The contracted capacity value will be the greater of the UCAP or the summer net dependable capacity rating as per the PPA.

Termination Right with Insufficient Compensation: The PPA provides for Delmarva to abandon its rights under that contract at any time with the payment of a nominal amount (\$50/kW) to the project owner. Projects will not get developed and financed where the risk of termination is not mitigated by receipt of a payment that pays down all outstanding debt and provides an industry-standard, reasonable return on equity.

- 3.4.1.2 Upon approval of the PPA for rate recovery by the relevant regulatory authorities, the security posting requirement will be raised to \$100/kW of contracted

capacity as described in section 3.4.1.1 above

3.4.1.3 Upon Commercial Operation Date, the before in-service date(s) security postings requirements will be discontinued except as noted below.

3.4.1.4 At the expected start date under the PPA for power delivery under the PPA, bidder will be required to post and maintain security in the amount equal to the anticipated replacement cost for the PPA (i.e., Delmarva's SOS customer exposure). The security posting will cover a two-year forward period, which is the minimum period that Delmarva estimates it will take to obtain and have governmental and regulatory approval of an equivalent replacement contract. The replacement contract cost will be valued as the expected PJM RPM capacity value (or a mutually agreed-upon equivalent) for the delivery year plus the energy cost as measured by NYMEX Henry Hub forward price index times an 8,000 BTU/kWh implied heat rate (Delmarva reserves the right to change the implied heat rate subject to the nature of the PPA agreement). The security posting for PPA replacement cost will be marked-to-market daily for the rolling two-year forward period beginning on that day.

Bidder will be responsible for informing Delmarva of changes in milestone status and Delmarva will modify posted security levels once the milestone status is approved.

To the extent that there is a delay (i.e., the construction period and the PPA capacity or energy delivery period overlap), the bidder will be required to maintain security equal to the sum of the security required before the in-service date plus the security required after the in-service date. In addition, any delay in the in-service date beyond the date agreed upon in the PPA shall incur a penalty ("Delay Damages") of \$7.00/kW-month which will be assessed on a daily basis for each month the facility(ies) is not available against the facility(ies) UCAP rating. Further, such delay entitles Delmarva not to accept power under the PPA until the plant is on-line.

During the construction phase of the project, failure to complete milestones by their contractually prescribed date may result in forfeit of specific amounts of the security posting, as specified in the PPA. Likewise in the event of default under the PPA, bidder may forfeit portions of the security posting. Bidder shall replenish the security fund to the required level within fifteen (15) business days after any draw on the Security Fund by Delmarva. If the bidder or project owner fails to provide adequate security and/or extension upon 60 days notice, Delmarva may withhold cash from future payments in the amount of the deficiency in the security.

3.4.2 Forms of Security

Delmarva is willing to accept security in the following form, subject to restrictions described in Section 3.4.4 below

An irrevocable standby letter of credit ("Letter of Credit") in form and substance acceptable to Delmarva, from an Issuer with a senior unsecured long-term credit rating (un-enhanced by third-party support) equivalent to A- or better as determined by both Standard & Poor's or the equivalent by Moody's or Fitch. Security provided in this form shall be consistent with the PPA and include a provision for at least thirty (30) days advance notice to Delmarva of any

expiration or earlier termination of the security so as to allow Delmarva sufficient time to exercise its rights under said security if bidder fails to extend or replace the security. Such security must be issued for a minimum term of 2 years or in the event the remainder of the PPA term is less than 12 months, the security must be issued for a minimum term of one year.

Unsecured credit as described in section 3.4.3 may be counted against the total required security posting after the delivery start date in the PPA.

3.4.3 Bidder Credit Limit

The amount of unsecured credit shall be capped at \$50,000,000 for the most credit-worthy entities, and shall decline as the credit rating of the bidder declines. Delmarva shall determine the maximum amount of credit allowed as a share of the company's total tangible net worth, depending on the firm's senior unsecured credit rating, as shown below. The amount of unsecured credit allowed for the PPA shall be the product of the total tangible net worth (TNW) times the TNW Percentage shown below, or the unsecured credit limit presented below, whichever is lower, up to the amount of the cap stated above.

S&P Rating	Moody's Rating	Fitch Rating	TNW Percentage	Bidder Credit Limit (Cap)
AAA to AA-	Aaa to Aa3	AAA to AA-	10%	,000,000 \$50,000,000
A+ to A-	A1 to A3	A+ to A-	8%	\$40,000,000
B13B+ to BBB	Baa1 to Baa2	BB13+ to BBB	6%	\$30,000,000
BBB-	Baa3	BBB-	4%	\$20,000,000

~~If the difference among the ratings of these agencies, the lowest rating shall be used. Bidders must either~~

a credit rating from one of these three agencies or have a guarantor for the amount of security required that is considered credit-worthy by one of these three agencies, or provide 100% of the required security in a letter of credit.

The Bidder Credit Limit shall be recalculated and the form of security posting adjusted based on the bidder's most recent fiscal year end audited financial statements or within 5 business days of the bidder becoming aware of any change in the bidder's senior unsecured debt rating.

3.4.4 Minimum Liquid Collateral

A minimum of 10% of the security posting must be provided in the form a Letter of Credit and any additional security posting in excess of the Bidder Credit Limit shall also be in the form of a

Letter of Credit. Further, bidders should note that Company reserves the right to protect itself against counterparty credit concentration risk, and as such, may require bidder to post acceptable credit support in the form of an Irrevocable Standby Letter of Credit in amounts in excess of those described above to maintain compliance with Delmarva's credit policies.

3.4.5 Reevaluation and Term of Security

If at some point in time after posting security the rating (as measured by Standard & Poors, Moody's or Fitch) of the entity guaranteeing the security changes but remains investment grade, the appropriate mix of the security (combined liquid collateral and unsecured credit) will be determined based on the above criteria. If at any time the rating falls below investment grade (BBB- or its equivalent), Delmarva may at its option require the project owner to post additional security of an acceptable nature and level.

In sum, if the exposure of Delmarva's SOS customers is determined at some point after the delivery date under the PPA to be \$100,000,000, then the bidder must first provide \$10,000,000 (10%) in liquid collateral. Next, if the bidder has a high tangible TNW and is rated A-, they may reduce the liquid credit requirements by their credit limit of \$40,000,000. The remaining liquid security required would be \$100,000,000 minus \$10,000,000, minus \$40,000,000, or \$50,000,000.

As part of this process, Delmarva reserves the right to request further financial information from bidder(s) or its credit support providers. Delmarva may require the successful bidder(s) (or its credit support provider(s)) to post a form of acceptable credit support to ensure the bidder's performance under the terms of the Proposal. The amount of acceptable credit support, if required, will be in an amount determined by Delmarva's evaluation of the bidder's credit condition in conjunction with a determination of the financial and performance obligations of the bidder under the terms of the Proposal.

4. TECHNICAL REQUIREMENTS AND PREFERENCES

From a technical perspective, Delmarva requires all facilities to be in compliance with PJM Manual 14D, Generator Operational Requirements, Revision 7, effective date June 19, 2006, and the Conectiv Power Delivery - Technical Considerations Covering Parallel Operations of Customer-Owned Generation (May 9, 2003).

5. SCHEDULE

The overall schedule for this RFP is provided below, and described in this section. **EVENT**

DATE DEADLINE

Issuance of RFP by Delmarva	, 2006
Written questions for pre-bid meeting	November 10, 2006
Pre-bid conference	November 15, 2006
Notice of Intent due	November 22, 2006
Access provided for bidders to PPA	
Final questions from bidders due	November 29, 2006
Recommended submissions date for proposals	December 1-8, 2006
Non-responsiveness screen completed for proposals submitted by December 8, 2006	December 15, 2006
Complete proposals due - all bidders	December 22, 2006
Threshold and Detailed proposal evaluation	December 22, 2006 onwards
Notification of Acceptance for Detailed Evaluation	By January 5, 2007
Delmarva recommendation to public agencies	Early February 2007

Public agency decision	By February 28, 2007
Filing of IRP by Delmarva	December 2, 2007
Regulatory approval of PPA(s)	By June 30, 2007
Project On-Line Date	June 1, 2013 or earlier

5.1 PRE-BID CONFERENCE - November 15, 2006

Two weeks after the issuance of the RFP, on November 15, 2006, a pre-bid conference will be held near Newark, Delaware. The specific time and location of this meeting will be announced to each prospective bidding party who submits a "Notice of Intent to Bid" form. Delmarva reserves the right to limit the number of prospective bidders' representatives in attendance. If this is necessary, Delmarva will provide sufficient advance notice to all prospective bidders affected. At this conference, Delmarva will make an in-person presentation of this solicitation process, respond to pre-submitted questions and comments, and address questions from the floor. At this meeting, Delmarva will review an example of how they intend to score selected criteria. Pre-submitted questions must be received prior to November 10, 2006 to be discussed at the pre-bid conference.

5.2 NOTICE OF INTENT (NOI) - November 22, 2006

By November 22, 2006, each prospective bidding party must advise Delmarva of its intent to submit a proposal by completing the "Notice of Intent to Bid" form included as Form A in Attachment 2 of this RFP and submitting as per the instruction on the form. Future correspondence by Delmarva regarding this RFP will be forwarded only to parties that express intent to submit a proposal.

While this NOI would not obligate potential Bidders to submit a proposal, it will provide Delmarva with an early indication of the number of proposals it must be prepared to evaluate. In addition, when they file an NOI, potential bidders shall specify the total capacity of the project (in megawatts) and the point(s) at which the project(s) would interconnect with the transmission grid in Delaware, and provide other information, as specified on Form A in Attachment 2, so that Delmarva may begin preliminary analysis of the transmission impacts of such project(s), as indicated in Section 5.3. Delmarva expects that only serious potential bidders will submit an NOI.

5.3 TRANSMISSION IMPACT STUDY - By November 22, 2006

Bidders must provide information required for Delmarva to undertake a transmission impact study on the Notice of Intent to Bid form with this RFP and return to Delmarva by November 22, 2006. This form shall provide basic information about the project necessary for Delmarva to carry out a preliminary transmission analysis, including the size of the project, the interconnection point, and basic information on the intended operation of the project.

Bidders agree that Delmarva's assessment would be preliminary. The final network transmission cost impact would be determined by PJM's feasibility and impact studies.

5.4 RFP RESPONSE DEADLINE - December 22, 2006

All proposals must be received on the RFP web site in Section 6.3 by 5:00 p.m. Eastern Prevailing Time on December 22, 2006. Bidders may not initiate any modifications to their proposal(s) after December 22, 2006. Bidders are strongly encouraged to submit their proposals before December 22, 2006 to facilitate the evaluation process.

5.5 NOTIFICATION OF NON-RESPONSIVENESS - For proposals filed early

All proposals will be given an initial examination for responsiveness. Any bidder submitting a proposal by December 8, 2006 that is found to be non-responsive will be contacted by December 15, 2006 and shall be given seven calendar days to correct the deficiency(ies). Failure to respond within the required time, or failure to adequately correct the proposal's deficiency(ies) will result in rejection of the bid. Proposals received after December 8, 2006 can not be assured that the bidder will be contacted by Delmarva for non-responsiveness or, if contacted, that the bidder will have sufficient time to correct the deficiency(ies).

Bidders may also be disqualified at any time during the solicitation process for non-responsiveness.

5.6 NOTICE OF DETAILED EVALUATION - January 5, 2007

Bidders whose proposals are selected for consideration in the Detailed Evaluation phase will be notified by January 5, 2007, and may be contacted to address any questions Delmarva has about the proposal. Bidders will be required to respond to Delmarva's questions within three business days.

Delmarva expects to negotiate with highly-ranked bidders to obtain better terms and mutually advantageous changes to proposals. Bid prices (including pricing formulas) will not be the subject of negotiations.

5.7 NOTIFICATION OF WINNING BIDDER(S)

Delmarva anticipates completing its IRP evaluation process no later than February 28, 2007. At this time the winning bidder(s) will be notified of their preliminary selection, subject to the outcome of the IRP process. Unsuccessful bidders will be notified of the rejection of their proposals.

5.8 NEGOTIATIONS AND AWARDS

Upon completion of the IRP process, contract negotiations may begin. The negotiation process must be organized and conducted so that the process is completed in a timely manner. The negotiating team will consist of Delmarva staff members, and outside technical and legal experts, as deemed necessary by Delmarva. The final PPAs must have all required Company corporate approvals.

5.7 STATE AGENCY APPROVAL

Once the IRP process is complete and PPAs have been executed, the PPAs must be presented to the appropriate public agencies for approval.

6.0 PROJECT ADMINISTRATION 6.1 RECEIPT OF PROPOSALS

Prospective bidders must file electronic applications at the web-site identified below. For any materials which cannot be submitted electronically, ten bound paper copies should be delivered to:

Lezael Haynes
ICF International 9300 Lee Highway
Fairfax, VA 22031

These materials shall be delivered no later than 5:00 pm Eastern Prevailing Time on December 22, 2006. Neither Delmarva nor ICF is responsible for the failure of delivery services to provide such materials before the deadline. Note that:

- Proposals will not be accepted after the deadline.
- Bidders will receive notice of Proposal receipt.
- Bidders providing proposals on or before December 8, 2006 will be advised of any missing material and given the opportunity to file this material prior to the final deadline date. Only the material previously identified as missing will be accepted at this time.

6.2 COMMUNICATIONS

The Evaluation Team (the Team) will consist of staff from Delmarva and the Consultant. Members of the Team are prohibited from working on Company's self-build and/or company's affiliate proposals in response to this RFP, or communicating with members of Company's Self-Build or its affiliate's Proposal team. Additional procedures governing the Company's communications are as follows:

Communications between Evaluation Team Members and Bidders The Company regards communication between the Team and the bidders as confidential among the parties required to evaluate the proposals, which includes but may not be limited to the Team and the public agencies responsible for reviewing them. The Team is not responsible for information regarding their proposals that the bidders may release.

In addition, bidders should clearly identify each page or section of information in their proposals considered by bidder to be confidential or proprietary. Delmarva reserves the right to release proposals to agents or consultants of Delmarva for purposes of proposal evaluation. Delmarva's disclosure standards and policies will contractually bind such agents or consultants. Regardless of the confidentiality, information contained in proposals may be subject to disclosure to and review by appropriate state jurisdiction, or any other governmental authority or judicial body with jurisdiction relating to these matters or agents thereof and may be subject to legal discovery. Under such regulatory and legal circumstances, Delmarva will make all reasonable efforts to preserve bidders' confidential information, including requesting that it be filed under seal.

The Company's responses to requests for information (RFIs) from bidders will be provided to all bidders by posting the RFI and the response on the private section of the RFP website, unless the question specifically pertains to a defined and confidential project-specific issue. In that case, the

Company may respond only to the specified bidder. Proposals will be scored only on the basis of written material formally submitted to Company. Any information the Company receives from by other means will not be considered unless confirmed in writing by the bidder.

RFIs from bidders shall be submitted no later than 5:00 pm on November 29, 2006, to allow sufficient time for Delmarva to respond and enable Bidders to act upon that information in time to submit their proposals.

Web-Site Communication

Throughout this process, bidders wishing to contact the Team shall do so through the web site identified below. Except for the pre-bid meeting, this web site shall be used for all contact with the Team on this solicitation, including questions that bidders wish to submit and for their proposals. Access to the public portion of the web site will be provided to all stakeholders (e.g., to ask questions prior to the due date for proposals). There shall also be a private, password-restricted section of the web site that is available only to those entities that have submitted a Notice of Intent to Bid, which shall be due no later than November 22, 2006.

The public website for general information and questions is _____

On that website is a link to the private section, which requires a password to access.

Potential bidders shall not seek to influence Delmarva's or the Consultant's evaluation of proposals in any way during the period from the issuance of this RFP to the completion of the contracting process under a PPA. Attempts to do so may be grounds for disqualification from the review process.

Requests for Information (RFI) from the Company

The Company reserves the right to request bidders to clarify information in their Proposals. The Team will forward any RFIs to the affected bidder. The bidder will have three business days to respond to the M . Once the RFI response is received, it will be distributed to relevant reviewers to complete the analysis of the bidder's proposal. If a bidder elects not to respond to an RFI, its Proposal may be withdrawn from consideration in the RFP process. [The requirement for a three-day response may be considered reasonable due to the schedule, but is burdensome if responders are to form a thoughtful, reasoned response to any conceivable question or contract issue. If detailed legal or technical information or opinion is required, it is unreasonable to expect a full contractually-obligating response in three days. It should be clearly identified why such a timeframe for response is required. Bluewater Wind requests that this requirement be amended to five business days.](#)

6.3 DOCUMENTATION

The Company shall maintain documentation, including evaluation sheets and analysis, used as the basis for selecting preferred proposals. Such documentation may be used to provide support before the Delaware Public Service Commission to demonstrate that Company's proposal selection process resulted in an appropriate portfolio of generation resources and to demonstrate that the evaluation of proposals was fair. Each member of the Team will provide the Consultant with a copy of their evaluation sheets and analyses of each proposal, and the Consultant will maintain an accurate database of the rankings and associated scores. In addition, Team member shall maintain documentation of issues that relate to each proposal. These documented issues may be addressed in the detailed evaluation process with the

selected bidders.

6.4 DISQUALIFICATION OF BIDDER'S PROPOSAL

Proposals may be disqualified if they do not meet the Non-Responsive or Threshold Criteria described in the RFP. In addition, if a bidder does not respond in the timeframe indicated by Company to an RFI from Company, or attempts to communicate with the Delmarva Evaluation Team in ways not permitted under this RFP, such bidder's proposal may be disqualified at that time.

6.5 APPROVAL FOR ELIGIBLE PROPOSALS

During the proposal evaluation process, the Team will determine whether or not a proposal will proceed to the next phase at several stages, including the review of the Non-Responsive Criteria and Threshold Criteria evaluation, the detailed Price and Non-Price evaluation, the selection of the final award group, and the IRP process.

6.6 NON-DISCRIMINATION POLICY

Throughout the RFP evaluation and negotiation processes, Delmarva will not discriminate between, or grant preferences to any bidder based on race, gender, ethnic origin, creed, or religion, in accordance with legal requirements. Company's consideration, evaluation, and selection of proposals shall be entirely based on the merits of each Proposal as set forth by the RFP document, and not upon unrelated factors.

DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

"Affiliate" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Ancillary Services" shall have the meaning ascribed thereto in the PJM Agreements. "Business

Day" means any day except a Saturday, Sunday or a day that PJM declares to

be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m, and close at 5:00 p.m. Eastern Prevailing Time ("EPT").

"Buyer Downgrade Event" means that Buyer's (or Buyer's Guarantor's) Credit Rating is less than BBB- by S&P, BBB- by Fitch or Baa3 by Moody's.

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or Fitch.

The "Delivery Point" for contract energy shall be the Delmarva Zone. The Interconnection Point will be the PJM bus to which the generator is electrically connected, or the closest location thereto monitored for Locational Marginal Price by PJM.

"Delmarva Zone" means that aggregate of busses as listed on the PJM website and aggregated by Delmarva.

"Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date,

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

"Fitch" means Fitch Investor Service, Inc. or its successor.

"Guarantor" means any party, who may agree to guaranty Seller's financial obligations under this Agreement pursuant to an agreed on guaranty agreement, recognizing that such a party will be obligated to meet Buyer's credit requirements for Seller.

"kWh" means one kilowatt of electric power over a period of one hour.

"Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a senior unsecured credit rating of at least A- from S&P or A3 from Moody's and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank's Credit Rating is downgraded by any increment; or if the issuing bank's Current, Quick, Return on Assets, or Price/Earnings ratios diminish (reflecting the financial stability of the bank); or if the Party determines, for any reason, that the issuing bank's position has deteriorated, then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

"Moody's" means Moody's Investor Services, Inc. or its successor.

"Network Integration Transmission Service" shall have the meaning ascribed to it in the PJM Agreements.

"PJM" means the PJM Interconnection, LLC or any successor organization thereto.

"PJM Agreements" means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents, or any successor, superseding or amended versions that may take effect from time to time.

"PJM Operating Agreement" means the Operating Agreement of PJM or the successor, superseding or amended versions of the Operating Agreement that may take effect from time to time.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

"Standard Offer Service Load" or "SOS Load" means the total sales at the retail meter, plus Unaccounted For Energy, expressed in MWh or MW, as appropriate, for a particular class(es) of retail customers being served by Buyer pursuant to the PSC Settlement, as such sales vary from hour to hour, in Buyer's Delaware franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. For purposes of clarification, SOS Load shall not include changes in the Buyer's Delaware service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Delaware or a result of a significant franchise territory swap with another entity which has a franchised service territory in Delaware.

"Tangible Net Worth" or "TNW" means an entity's total assets (exclusive of intangible assets), minus that entity's total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission,

"TNW Amount" shall equal the product of the applicable TNW Percentage and an entity's Tangible Net Worth.

"TNW Percentage" means the percentage determined pursuant to Section 3.4.3 (Bidder Credit Limit) that is multiplied by an entity's Tangible Net Worth to determine that entity's TNW Amount.

"UCAP" means "Unforced Capacity" as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

"Unsecured Credit" means an amount that is the lower of- (i) the relevant Unsecured Credit Cap; or (ii) the relevant TNW Amount, as determined pursuant to Section 3.4.3 (Bidder Credit Limit).

"Unsecured Credit Cap" shall have the meaning ascribed to it in Section 3.4.3. "Variable

Interest Entity" shall mean any entity subject to FIN 46.

E x h i b i t 2

KEY COMMERCIAL TERMS OF POWER PURCHASE AGREEMENT

Attachment 1

KEY COMMERCIAL TERMS OF POWER PURCHASE AGREEMENT

CONFIDENTIAL SUMMARY OF PRINCIPAL COMMERCIAL TERMS

This Key Commercial Terms of Power Purchase Agreement ("Term Sheet") is the "Term Sheet" referred to in the Delmarva Power & Light Company Request for Proposals issued on _____ 2006 (the

Parties	[SERVICE PROVIDER], a ("Seiler"), and Delmarva Power & Light Company, a Delaware corporation ("Delmarva" or "Buyer"), referred to individually as "Party" or collectively as "Panics".
Transaction	Seller will provide and make available to Buyer and Buyer will purchase and pay for all Products (as defined below) provided pursuant to the terms of the definitive Power Purchase Agreement entered into by the Panics (the " Definitive Agreement ").
Project	<p>Any generation resource comprised of New Units (as defined below) located in the State of Delaware with a minimum Capacity (as defined below) to be made available under the Definitive Agreement of 50 MW (non-renewable resource) or 25 MW (renewable resource) and a maximum Capacity of 200 MW. The location (street address and county), the technology and fuel type of the Project are to be specified by Seller in its response to the RFP. A Project may consist of one or more individual generating units (e.g., wind turbines, simple-cycle combustion turbines, combined-cycle facilities) that may be part of a larger generating facility (that may be larger than 200 MW and that need not consist only of New Units) that are capable of being dispatched without regard for the operation or non-operation of any other generating unit (each, a "Unit"), but Projects must be comprised entirely of New Units.</p> <p>To qualify as a "New Unit", a Unit must be a generation resource that satisfies the requirements of Manual 14A of PJM Interconnection, LLC ("PJN") and satisfies, where applicable (e.g., for fossil generators emitting air pollutants), the permitting requirements for a major stationary source as defined in 40 C.F.R. Section 52.21)(I)(i) or 40 C.F.R. Section 52.24(f)(4)(i) and/or the permitting requirements of the Delaware Regulations Governing the Control of Air Pollution and in any case may not</p>

Product	<p>enter into Commercial Operation before the Execution Date (as defined below). A "New Unit" also may be the incremental increase in Capacity (but only the incremental increase in Capacity) to an existing generation resource resulting from any modification to such resource that constitutes a major modification as defined in 40 C.F.R. Section 52.21)(2)(i) or 40 C.F.R. Section 52.24(f)(5)(i) for which the Delaware Department of Natural Resources and Environmental Control requires a permit under the Delaware Regulations Governing the Control of Air Pollution which is completed and resumes Commercial Operation no earlier than the Execution Date.</p> <p>"Commercial Operation" is defined to mean that all commissioning activities have been completed, all performance testing has been satisfactorily completed (including that the Unit has demonstrated a net Capacity of not less than 95% of the maximum Contract Capacity specified in Seller's Offer), that the Unit is capable of regular commercial operation as reasonably determined by Buyer, and that the Unit has been accepted as a Capacity Resource by PJM,</p> <p>Seller understands and agrees that all Product from all Units comprising a Project must be made available exclusively pursuant to the Definitive Agreement except as otherwise expressly provided by the Definitive Agreement, but that the obligation to provide the Product is not subject to the availability of any Unit once the Services Term has commenced.</p>
Contract Term and Services Term	<p>The "Contract Term" will commence upon execution and delivery by both Parties of the Definitive Agreement and continue until final settlement (after the end of the Services Term, as defined below). The date the Definitive Agreement is executed and delivered by both Parties and Seller posts the initial installment of the Development Period Security (as defined below) is the "Execution Date." The Definitive Agreement will include conditions relating to Buyer's receipt of Regulatory Approval (as defined below) and the posting of the second installment of Development Period Security which must be satisfied prior to the time the Parties' remaining obligations become effective. Only upon satisfaction of such conditions will the "Effective Date" be deemed to have occurred. The Effective Date can occur no earlier than June 1, 2008. The Seller's Offer Deposit (required pursuant to the RFP) must remain in place until the initial installment of the Development Period Security is received by Buyer on the Execution Date and will be returned to Seller upon receipt of such initial installment.</p> <p>The "Services Term" will be the period during which Seller is obligated to provide Products to Buyer. The Definitive Agreement will specify the length of the Services Term. The Services Term shall commence on the Initial Delivery Date (as defined below) and continue for a minimum of ten (10) years and a maximum of twenty-five (25) years. The Initial Delivery Date may be no earlier than the Effective Date and may be no later than June 1, 2013.</p>

"**Product**" shall mean, collectively, Energy, Capacity, Ancillary Services and Environmental Attributes, all as defined herein. Seller may not enter into any agreement or arrangement under which Product attributable to the Project may be claimed by any person other than Buyer for purposes of satisfying such

person's obligations to PJM or any other independent system operator having jurisdiction over such person or the Units. Following the occurrence of the Initial Delivery Date, Seller's obligation to provide Product will not be dependent upon the availability of the Project; thus, if the Project is not available at any time during the Services Term, Seller will be obligated to provide Product from other resources. [As noted above, the term "Product" contradicts H.B. 6, which requires only the sale of capacity and energy, and several other points in the RFP \(e.g., Form R – PPA Pricing\) limiting the scope to just energy, capacity and ancillary services; nowhere else does the RFP require "Environmental Attributes" be sold to Delmarva. Though if sold, as discussed above, they should be properly valued in the transaction.](#)

Capacity: Seller's Offer should set forth a monthly schedule showing the maximum MWs of Unforced Capacity or "UCAP" (as defined in PJM's Reliability Assurance Agreement or any successor agreement) that the Seller is offering to make available to Buyer in each month of the Services Term ("Contract Capacity"). The highest Contract Capacity specified by Seller for any month is referred to herein as the **"Guaranteed Capacity."**

The amount of Capacity that Buyer will pay for each month will be the lesser of the Contract Capacity or the amount of UCAP delivered to the Buyer for the month of the Project as determined by PJM from time to time (**"Monthly Contract Capacity"**).

"Energy": All electric energy purchased up to the Monthly Contract Capacity defined above. Energy shall be offered consistent with the type of Project proposed by Seller (i.e., baseload, intermediate, load-following or peaking). [Given the various types of energy i.e. "energy shall be offered consistent with the type of Project proposed by Seller \(i.e., baseload, intermediate, load-following or peaking\)", how do these different categories impact bid comparisons \(e.g., is baseload valued more than peaking\)?](#)

"Ancillary Services": All products deemed to be "Ancillary Services" by PJM and/or the Federal Energy Regulatory Commission (**FERC**) as of the Effective Date or a future date during the Contract Term, including but not limited to reactive power, regulation (including load following), spinning reserves, non-spinning reserves, and replacement reserves associated with the Unit(s), together with all other capabilities of each Unit such as black start capability and replacement reserves that are not defined as Ancillary Services, and rights such as Environmental Attributes. Seller should identify all Ancillary Services that the Project is capable of providing. [As noted above, how will differences between the bidders in the number of ancillary services each provides be taken into account? For example, how will Bidder A, expecting to provide reactive power only, be compared with Bidder B, anticipating to supply all ancillary services – reactive power, load following, spinning reserves, non-spinning reserves, and replacement reserves?](#)

"Environmental Attributes" means (a) all credits, benefits, reductions, offsets and other beneficial allowances, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics attributable or allocable to the Project and its operation during the Contract Term and in which Seller has property rights or will have property rights upon such attributes coming into existence, and include without limitation any of the same arising out of legislation or

- regulation concerned with (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, and (b) all rights to claim or report Environmental Attributes. [If "Environmental Attributes" must be sold to Delmarva then bids for these products should be submitted separately](#)

from the other categories' (energy, capacity and ancillary services). Otherwise, prices for these products will be artificially high and put generators with environmental attributes to sell at a disadvantage. Furthermore, like the provision of ancillary services, there will be differences among bidders in the number of environmental attributes each will be supplying. How are bidders at these different levels to be judged? For instance, will a renewable energy generator asking an additional \$8/MWh for a "renewable energy certificate" or REC be penalized over a fossil-fuel plant that offers no such REC? This issue – of ensuring apples-to-apples comparisons among the bidders – should be remedied.

Generally speaking, including environmental attributes in the bid strongly implies that renewable energy generators will be faced with the choice of either raising their bid price to earn value for their clean technology and run the risk of losing the RFP to a generator whose technology has no such value, or forego the income, the value of which is well established in markets for RECs and for sulfur and nitrogen oxide pollution allowances in the publicly traded emission offsets markets, in the hopes of winning the bid. The RFP must make it clear that bidders will only be judged on the same products, that the same bundle of products will be supplied by each bidder – otherwise bidders will be forced to give value away in order to remain competitive.

Therefore, environmental benefits should be separately priced and sold to Buyer, or Seller should be able to sell to third parties. In addition, they should also not include IRS Section 45 Renewable Energy Production Tax Credits.

The Public Service Commission of the State of Delaware (the "PSC") or PJM or a successor control area operator may, during the Contract Term, put into place a Resource Adequacy ("RA") requirement whereby eligibility to credit Capacity toward the RA requirement may be determined by identifying specific Unit(s) or a combination of Unit(s). Seller agrees that the Unit(s) or combination of Units comprising the Project will meet all requirements necessary to qualify as a resource capable of contributing to Buyer's RA requirement and will consent in the Definitive Agreement to take such measures as necessary to qualify as a resource that counts toward Buyer's RA Requirement. In addition, Seller agrees to comply with all associated bidding/dispatch requirements imposed through either PJM market design and tariffs, the PSC or FERC. Such bidding requirements may be imposed in the day ahead, hour ahead or real time timeframe. Buyer will also have exclusive rights to all RA related products such as capacity tags, capacity credits, or installed capacity ("ICAP") products. Seller shall comply with any PSC, PJM or FERC requirements for meeting RA.

Commencement of Services The "Initial Delivery Date" is the date on which the Seller's obligation to deliver Capacity and to deliver Energy and Ancillary Services (as scheduled) commences, and Compensation payable by Buyer to Seller begins to accrue. The Initial Delivery Date shall not occur until the Seller has satisfied all conditions precedent to the Initial Delivery Date, which in the case of new generation, shall include (at a minimum):

- completion of the electric transmission interconnections necessary for delivery of electricity to the Buyer at the Delivery Point;
- completion of all equipment necessary for fuel delivery;
- demonstration that Seller holds all required environmental pennits and, to the extent required to operate at the maximum Contract Capacity, all emission allowances, credits and offsets;
- demonstration that Seller has interconnection and transmission services agreements in place that are satisfactory to Buyer;
- demonstration that Seller has fuel supply and transportation

agreements in place that are satisfactory to Buyer;

- each Unit has achieved Commercial Operation; and
- Seller has posted any applicable Collateral Requirement (as set forth in the "Credit Requirements" section below) required to be provided as of the Initial Delivery Date.

**Development
Period Security**

On the Execution Date Seller shall be required to post collateral in the form of an irrevocable standby letter of credit acceptable in form and content to Buyer from an issuer satisfying the requirements set forth in the RFP (a "Letter of Credit") to secure Seller's obligations in the period between the Execution Date and the Initial Delivery Date ("**Development Period Security**"). The Development Period Security to be provided on the Execution Date shall be in an amount equal to the product of (x) \$50, multiplied by (v) the Guaranteed Capacity (expressed in kilowatts). By not later than fifteen (15) days after the Effective Date, the amount of the Development Period Security shall be increased to equal the sum of (i) the product of (x) \$100, multiplied by (y) the Guaranteed Capacity (expressed in kilowatts), plus (ii) the maximum potential amount of Delay Damages payable under the Definitive Agreement as determined in "Delay Damages" below. Failure of Seller to provide the increased amount of Development Period Security shall allow Buyer to terminate the Definitive Agreement and retain the initial installment of Development Period Security as liquidated damages.

<p>Early Termination Rights for Permitting Failures</p>	<p>Buyer will allow Seller to terminate its Definitive Agreement and Buyer will return the Delivery Date Security to Seller less \$50 per kW of Guaranteed Capacity as liquidated damages if Seller, after making all commercially reasonable efforts to do so, is unable to secure the necessary permits and other governmental approvals required for construction of the Project within eighteen (18) months of the date Buyer notifies Seller that it has received final and non-appealable Regulatory Approval (as defined below) for its entry into and performance under the Definitive Agreement] (the "Permitting Completion Deadline"). Alternatively, if Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals, Buyer will permit Seller to extend the Permitting Completion Deadline by six (6) months if Seller agrees, going forward, to pay the full amount of the Development Period Security to Buyer as liquidated damages should it be unable to obtain the necessary permits and governmental approvals by the extended Permitting Completion Deadline</p> <p>Bluewater Wind reiterates the written comments of NRG and copies them here as follows: "Early Termination Rights for Permitting: The proposed period of 18 months for permitting is too short to allow the successful bidder sufficient time to obtain all necessary permits and other governmental approvals required for the project, particularly for more involved projects involving innovative technologies". Bluewater Wind strongly recommends language that both ensures credible proposals, but also provides more time for permitting projects using technologies that —because of federal and state regulations that are beyond the control of any developer— simply take longer to permit. An example of such language is as follows: "Buyer will allow Seller to terminate its Definitive Agreement and Buyer will return the Development Period Security to Seller less \$10 per kW of Guaranteed Capacity as liquidated damages if Seller, after making all commercially reasonable efforts to do so, is unable to secure the necessary permits and other governmental approvals required for construction of the Project within thirty six (36) months of the date Buyer notifies Seller that is has received final and non-appealable Regulatory Approval (as defined below) for its entry into and performance under the Definitive Agreement (the "Permitting Completion Deadline"). Alternatively, if Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals, Buyer will permit Seller to extend the Permitting Completion Deadline by twelve (12) months if Seller agrees, going forward, to pay \$15 per kW of Guaranteed Capacity to Buyer as liquidated damages should Seller be unable to obtain the necessary permits and governmental approvals by the extended Permitting Completion Deadline." This language could accommodate wind energy proposals, but would also accommodate projects using other generation technologies.</p>
<p>Construction Schedule</p>	<p>At least three (3) months prior to issuance of the notice to proceed by Seller to its construction contractor, Seller shall provide Buyer a construction schedule. Seller shall provide Buyer monthly progress reports, including projected time to completion, and Buyer shall have the right, during business hours and upon reasonable notice, to inspect the construction site and monitor construction of the Project.</p>

Guaranteed	Seller guarantees that the Initial Delivery Date will occur by not later than
Initial Delivery Date and Delay Damages	<p>(the "Guaranteed Initial Delivery Date").</p> <p>Subject to Force Majeure delays not to exceed twelve (12) months in the aggregate, for each day (or part thereof) that the Initial Delivery Date is delayed beyond the Guaranteed Initial Delivery Date, the Seller shall pay to Buyer liquidated damages equal to \$ [determined using \$0.2333 per kW of Guaranteed Capacity] ("Delay Damages"). Delay Damages shall be payable monthly <i>in arrears</i>. The maximum amount of Delay Damages payable by Seller shall be \$ [determined using daily Delay Damages amount multiplied by 365].</p> <p>In addition to receiving Delay Damages, subject to Force Majeure delays not to exceed twelve (12) months in the aggregate, if the Initial Delivery Date is delayed beyond the date that is no more than twelve (12) months after the Guaranteed Initial Delivery Date (the "Date Certain"), Buyer may elect to terminate the Definitive Agreement without liability or further obligation of any kind on the part of Buyer, and the Seller shall <i>pay</i> a termination fee equal to \$ [determined using \$100 per kW of Guaranteed Capacity] as liquidated damages to Buyer (the "Termination Fee").</p>
Critical Milestones	The Definitive Agreement will specify dates by which certain critical milestones for the development and construction of the Project must be achieved, which critical milestones shall include closing of debt financing (unless Seller demonstrates as of the Effective Date that it has equity financing sufficient to cause the project to achieve the Initial Delivery Date), issuance of a full notice to proceed to the construction contractor, delivery of generators to the Project site, and encrgization of the Project). Seller's failure to achieve a critical milestone within sixty (60) days of the specified date for reasons not due to Force Majeure shall constitute an event of default under the Definitive Agreement allowing Buyer to terminate and to retain the full amount of Development Period Security as liquidated damages.
Scheduling	Seller shall be obligated to perform all scheduling of the Unit(s) in compliance with PJM protocols.
Operational Constraints	The operational constraints of the Unit(s) shall be those set forth in Seller's response to the RFP. Although Seller's obligation to provide Products is not Project-specific, Seller's obligation to provide Product as of any given time would be based on the Unit's(s') operational constraints. The unavailability of a Unit dispatched within such operational constraints will not excuse Seller's obligation to deliver Products as otherwise required under the Definitive Agreement.

Operating Procedures	<p>Prior to the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein or in the Definitive Agreement, including, but not be limited to, (1) procedures for scheduling, (2) methods of day-to-day communications, (3) key personnel lists, (4) record keeping and (5) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the "Operating Procedures"). Failure to agree on the Operating Procedures shall be resolved in accordance with the dispute resolution procedures, but shall not relieve either of the Parties of its other obligations under this Agreement.</p>
Interconnection Point and Delivery Point	<p>The "Interconnection Point" of the Project will be the PJM bus in the State of Delaware to which the generator is electrically connected, or the closest location thereto in the State of Delaware monitored for Locational Marginal Price by PJM. The "Delivery Point" of all Energy delivered under the Definitive Agreement shall be the "Delmarva Zone."</p>
Electric Interconnection and Transmission Service	<p>Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to the Interconnection Point and enable Energy to be delivered to the grid at the Delivery Point, consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency and the interconnecting transmission owner.</p> <p>Seller will be responsible for funding any upgrade(s) to the transmission network as required by PJM. Regardless of whether Buyer is the interconnecting transmission owner, Delmarva in its capacity as Buyer shall not be responsible for Seller's interconnection arrangements or costs.</p>
Billing and Payment	<p>Seller shall be responsible for the costs of delivering its power to the Delivery Point consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency or tariff.</p>
	<p>For gas-fired Projects, Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to the natural gas system and enable delivery of fuel to the Unit(s), consistent with all standards and provisions set forth by the FERC or any other applicable governing agency. For non-gas-fired Projects, Seller shall be responsible for all fuel delivery and storage facilities.</p>
Fuel Interconnection Fuel Supply and Transportation	<p><u>Seller shall be responsible for all arrangements for and costs of fuel supply</u> and delivery, including all ancillary services such as balancing or storage. (The preceding is without prejudice to such pricing proposals as Seller wishes to offer, which may tie the price of energy to the cost of fuel).</p>
Maintenance Obligations	<p>Seller will be responsible for all operation and maintenance of the Unit(s) and will bear all costs related thereto.</p>

A. "Capacity Payment Rate"-specify the annual values in the response to the RFP as \$ per kW-year (price to include Ancillary Services and Environmental Attribute products) to be paid in equal monthly increments.

Compensation: B. "**Energy Rate**"-specify the rate or rates in the response to the RFP as \$ per MWh.

The monthly "Capacity Payment" is (x) one-twelfth (1/12th) of the Capacity Payment Rate, multiplied by (y) the Monthly Contract Capacity for the specific month. The Capacity Payment will be paid monthly, in arrears, for each month of the Services Term.

"Energy Payment": For each month of the Services Term, the Energy Payment will equal the Energy Rate multiplied by the amount of Energy scheduled and received by Buyer in the applicable month.

Each month during the Services Term, Seller shall invoice Buyer, in arrears, for all Compensation amounts. If each Party is required to pay the other an amount in the same month pursuant to the Definitive Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten days after delivery of the owed Party's invoice or the twentieth day of the month (or, in each case, if the due date is not a business day, on the next following business day). The Parties shall resolve disputed amounts pursuant to a dispute resolution process to be included in the Definitive Agreement. In the event of termination, Buyer, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if Seller is the owing Party, provide Seller an invoice within ten (10) business days of the termination date, which shall be due within ten (10) business days after receipt; or (b) if Buyer is the owing Party, pay Seller the Termination Payment within twenty (20) business days of the termination date.

Events of Default Either Party will be in Default under the Definitive Agreement upon the occurrence of, including but not limited to any of the following:

Applicable only to Seller:

- Failure to deliver any Product as and when required under the Definitive Agreement.
- Any material asset of Seller is taken upon execution or by other process of law directed against Seller or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.
- Upon the occurrence of any material misrepresentation or omission in any metering or any report or notice of availability required to be made or delivered by Seller to Buyer by the provisions of the Definitive Agreement, which misrepresentation or omission is caused by Seller's willful misconduct, gross negligence or bad faith. Seller fails to post, supplement or renew when due the Development Period Security.
- Seller fails to comply with the Credit Requirements provisions of the Definitive Agreement.
- Seller fails to comply with Resource Adequacy requirement of the Definitive Agreement.
- During the Services Term, the UCAP of the Project is below 90% of the then-applicable Monthly Contract Capacity for a period of six (6) consecutive months, and such reduction in UCAP is not due to a Force Majeure event;
- During the Services Term, an event of Force Majeure results in the Project's

UCAP being less than 90% of the then-applicable Monthly Contract Capacity for a period of twelve (12) consecutive months. Bluewater Wind respectfully notes that this is an onerous provision for a wind project. We believe a 50% capacity for 12 months is more in line with commonly excepted parameters of a wind contract in such a Force Majeure situation.

Applicable to both Parties:

- A Party fails to pay an amount when due and such failure continues for ten (10) business days after notice thereof is received.
- A Party fails to perform any of its material obligations under the Definitive Agreement and such default continues for thirty (30) Days after notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action is instituted by the defaulting Party within the thirty (30)-day period and so long as such action is diligently pursued until such default is corrected, but in any event within ninety (90) days.

- A Party applies for, consents to, or acquiesces in the appointment of

	<p>a trustee, receiver, or custodian of its assets (including, in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.</p> <ul style="list-style-type: none"> • Absent the consent or acquiescence of a Party, appointment of a trustee, receiver, or custodian of its assets (including in the case of a Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days. <p>+ Any governmental approval necessary for a Party to be able to perform all of the transactions contemplated by the Definitive Agreement expires, or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation, or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.</p> <ul style="list-style-type: none"> • Upon the occurrence of any material breach of any representation, covenant, or warranty made by a Party made in the Definitive Agreement, thirty (30) days after the written notice from the other Party that any material representation, covenant or warranty made in the Definitive Agreement is false, misleading or erroneous in any material respect.
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<p>Remedies:</p>	<p>Upon the occurrence of an Event of Default due to Seller's failure to deliver any Product as and when due under the Definitive Agreement, Buyer's remedy shall be payment by Seller of all of Buyer's costs of obtaining such Product from panics other than Seller (i.e., cost of cover). In the case of all other Events of Default, or if Seller fails to deliver any Product as and when due under the Definitive Agreement more than five (5) times in any calendar year, the non-Defaulting Party may elect to exercise any or all remedies available to it, including but not limited to, the following:</p> <ul style="list-style-type: none"> • Terminate the Definitive Agreement. • Prior to the Initial Delivery Date, if Seller is the Defaulting Party, Seller will pay a Termination Payment equal to the undrawn portion of the Development Period Security and if Buyer is the Defaulting Party, Buyer will pay a Termination Payment of \$50 per kW multiplied by the Guaranteed Capacity. • On and after the Initial Delivery Date, the Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the Settlement Amount is equal to the Losses or Gains, and Costs, expressed in U.S. dollars, winch the Non-Defaulting Party incurs as a result of the liquidation of the transaction, as of the effective date of termination, where the
	<p>Settlement Amount, Losses, Gain and Costs, have the meanings set forth in the Master Power Purchase & Sale Agreement published by EEI, or a similar master agreement. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.</p> <ul style="list-style-type: none"> + Exercise any other right or remedy available at law or in equity, other than specific performance. • The non-Defaulting Party shall be entitled, at its option and in its discretion, to setoff against any amounts owed to the Defaulting Party by the non-Defaulting Party or any of its Affiliates under the Definitive Agreement or otherwise any amounts payable by the Defaulting Party to the non-Defaulting Party or any of its Affiliates under the Definitive Agreement or otherwise. This section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law or other wise). Notwithstanding any provision to the contrary contained in the Definitive Agreement, the non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Definitive Agreement until the non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all obligations of any kind whatsoever of the Defaulting Party to make any payments to the non-Defaulting Party or any of its Affiliates under the Definitive Agreement or otherwise which are due and payable as of the effective date of tennination have been fully and finally performed.

	The rights and remedies of a Party pursuant to the Remedies Section of the Definitive Agreement shall be cumulative and in addition to the rights of the Parties otherwise provided in the Definitive Agreement. Bluewater Wind suggests that as a matter of fairness, Buyer should offer security in the event it is no longer investment grade.

Metering

Force Majeure	<p>"Force Majeure" shall mean any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date; (4) sabotage, riot, acts of terrorism, war and acts of public enemy; or (5) restraint by court order or other governmental authority. Force Majeure shall not include (i) a failure of performance of any Third Party, including any party providing electric transmission service (Bluewater Wind notes that this is problematic if Buyer does not in fact own transmission from the delivery point.) or natural gas transportation, except to the extent that such</p>
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the definition of a Force Majeure event as defined above, (ii) failure to timely apply for or obtain Permits or (iii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above).

A Party shall not be considered to be in default in the performance of its obligations under the Definitive Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the foregoing, (i) a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused; and (ii) from and after the Initial Delivery Date, the unavailability of the Units due to Force Majeure shall not relieve Seller of its obligation to deliver all Products otherwise required to be delivered under the Definitive Agreement.

Seller shall install, maintain, operate and replace (as needed) electric meters and back-up meters at the Interconnection Point at its sole cost and expense. The meters will be sealed by both Parties, which seals will only be broken by both Parties for inspection, testing or adjustment. The electric meters shall meet all specifications of PJM and shall be checked annually by Seller, who shall provide Buyer with not less than thirty (30) days prior written notice of such tests. Buyer will have the right to have a representatives) present during such tests.

Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by PJM or the applicable service provider. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by PJM or the applicable service provider, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters to determine the amount of the inaccuracy. If the back-up meters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be

	<p>invoiced by such Party within fifteen (15) days of the discovery of such inaccuracy, with payment due within thirty (30) days.</p> <p>To support invoice settlement purposes, Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Project's on-line meter data and any gas real-time metering.</p>
Compliance with Law, Environmental Risk and Indemnity	<p>Seller, as owner and operator of the Project, will be responsible for complying with all applicable requirements of law, PJM and NERC, whether imposed pursuant to existing law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Unit(s) or the Project site. Seller will indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable law, or PJM or NERC requirements. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all permits, governmental approvals and emissions credits and allowances required for operation of the Unit(s) in compliance with law.</p>
Credit Requirements (as of the Initial Delivery Date)	<p>The amount of unsecured credit to be extended to Seller will be determined pursuant to Attachment 1 based on the senior unsecured long-term debt rating of Seller or its affiliate guarantying Seller's obligations (the "Seller Credit Limit"). The Seller Credit Limit may be set at zero, and may not exceed \$50,000,000. Buyer intends to compute a market value for the Products sold under the Definitive Agreement, with weekly collateral posting requirements (in excess of the Seller Credit Limit) tied to changes in market value of the Products. Without regard for the Seller Credit Limit in effect at any time, from and after the Initial Delivery Date Seller must provide Buyer a Letter of Credit in an amount equal to 10% of the then-effective Collateral Requirement (as defined below) (the "Minimum Liquid Collateral"). In addition to the Minimum Liquid Collateral, Seller will provide Buyer a Letter of Credit in an amount equal to the positive difference, if any, between the Collateral Requirement (minus the Minimum Liquid Collateral amount) and the Seller Credit Limit (the "Additional Liquid Collateral"). During each week during the Services Term, the MtM Value shall be calculated according to the formula set forth in Attachment 2 for the next twenty-four (24) months. Buyer shall be the calculation agent and will provide notice weekly to Seller of the Collateral Requirement amount to be posted by Seller. Within three (3) business day of such notice, Seller shall post the Additional Liquid Collateral or Seller shall return such collateral previously posted that is in excess of the sum of Buyer's then-required Minimum Liquid Collateral and Additional Liquid Collateral.</p>

The "**Collateral Requirement**" for Seller at any point in time after the Initial Delivery Date is the positive amount of the Marked-to-Market Value as determined pursuant to

Attachment 2.

Lien on Project

In addition to any other Collateral required to be provided by Seller, Seller shall grant to Buyer a perfected lien on and security interest in all of Seller's right, title and interest in and to the Project, which Lien shall be subordinate only to the lien, if any, granted to persons not related to Seller that provide construction or term financing for the Project. Such lien and security interest shall be created and evidenced by documentation satisfactory to Buyer.

Confidentiality

Seller shall maintain all commercial terms confidential for the greater of

- (1) the term of the Confidentiality Agreement between Seller and Buyer, if any;
- (2) three years from the date of this Term Sheet; or
- (3) the Contract Term.

Neither Party shall disclose the terms or conditions of this Term Sheet to a third party (other than either Party's employees, lenders, counsel, accountants, advisors or ratings agencies) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party, or as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the PSC, the Delaware Department of Natural Resources and Environmental Control, and any other regulatory agency which claims jurisdiction over the subject matter of the Definitive Agreement or its subject matter; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section. This confidentiality provision shall become binding upon delivery of the completed Term Sheet.

Dispute	All disputes that cannot be resolved after referral to senior management of
Resolution:	the Seller and Buyer shall be referred to the PSC for resolution.

Other Terms and Conditions	The Parties will be expected to make customary representations and warranties.
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The Definitive Agreement will be governed by Delaware law.

Seller will agree to maintain customary books and records, including without limitation, operating logs, meter readings and financial records and make such books

and records available for audit.

Seller will agree to maintain adequate property and liability insurance.

Each Party will provide indemnities customary for transactions similar to the Transaction.

The right of Seller to assign the Definitive Agreement or to transfer control of the Units (directly or indirectly) to another person, whether or not affiliated, shall be subject to Buyer's consent, not to be unreasonably withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller. Assignment of the Definitive Agreement and liens upon the Units for purposes of project financing shall be permitted; and Buyer will execute such additional consents as reasonably required by Seller in connection with such assignment; provided that Buyer shall not be required to consent to any additional terms or conditions, including extension of the cure periods or additional remedies for lenders; and provided further, Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such documents, including attorneys' fees.

Seller will agree that the Units and the Products will be free of liens other than permitted liens as agreed to by the Parties.

Each Party shall be responsible for taxes assessed upon it, including any new taxes that may be imposed during the Contract Term.

Interest shall accrue on all obligations not paid when due at the rate of prime plus 2% per annum. After the occurrence of an Event of Default, interest shall accrue on all obligations at the rate of prime plus 2% per annum.

Seller agrees to pay to the Buyer, upon written demand from the Buyer from time to time, the amount of all expenses, including reasonable attorneys' fees and expenses, paid or incurred by the Buyer (i) after any of the obligations are not paid or performed when due (whether by demand, acceleration or otherwise), (ii) after a default or an Event of Default shall occur, (iii) in exercising or enforcing or consulting with counsel concerning any of its rights under the Definitive Agreement or under law. Seller also agrees to

	pay to the Buyer, upon written demand by the Buyer from time to time, interest on the outstanding amount of such expenses paid by the Buyer, from the date of the Buyer's demand for payment of such expenses until the same are paid in full, at the highest rate provided herein.
Regulatory Approval	<p>The occurrence of the Effective Date is subject to (i) approval of the terms of the Definitive Agreement without modification by the PSC, the Delaware Department of Natural Resources and Environmental Control, or any other regulatory agency which claims jurisdiction over the contract, and (ii) receipt by Buyer of a final, nonappealable order of PSC allowing Buyer to recover payments under the Definitive Agreement in utility revenue subject only to PSC review with respect to the reasonableness of Buyer's administration of the Definitive Agreement. If Regulatory Approval is not received on or before June 30, 2007, then either Party may terminate the Definitive Agreement without liability or further obligation. In addition, if Buyer at any time during the Services Term is not permitted to recover fully in utility revenue all amounts payable under the Definitive Agreement, then Buyer may terminate the Definitive Agreement without liability or further obligation upon thirty (30) days' prior written notice to Seller. Bluewater Wind again reiterates the written comments of NRG as follows: "The proposed unilateral right of DPL to terminate the PPA at any time during its term if full recovery of all amounts payable under the PPA is not permitted by the PSC. This right creates such fundamental uncertainty in the revenue stream expected from the project that no developer would be willing to commit to the large capital investment needed – and certainly no lender would ever provide financing to such a project since there would always be a question as to whether the long term revenue stream of the project would be sufficient (in duration and amount) to repay debt and provide a return on equity;"</p>
Forward Contract	<p>The Parties acknowledge and agree that the Definitive Agreement and the transactions consummated thereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code.</p>

[NO FURTHER BLUEWATER WIND LLC COMMENTS.
ORIGINAL TEXT FROM HERE TO END THUS
DELETED.]